SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 120

JEREMIAH REEVES, JR., PETITIONER,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

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1 [Caption omitted]

In the Circuit Court of Montgomery County, State of Alabama

No. 5121

THE STATE OF ALABAMA, PLAINTIFF

vs.

JEREMIAH REEVES, JUNIOR, DEFENDANT

INDICTMENT—Filed November 14, 1952

THE STATE OF ALABAMA,
Montgomery County:

Circuit Court of Montgomery County November Term A.D. 1952

The Grand Jury of said County charge, that before the finding of this indictment,

JEREMIAH REEVES, JUNIOR, whose name is to the Grand Jury otherwise unknown, forcibly ravished Mrs. Ann Crowder, a woman, against the peace and dignity of the State of Alabama.

WILLIAM F. THETFORD,
Solicitor Fifteenth Judicial Circuit of Alabama.

No Prosecutor—A TRUE BILL—Homer Spiva, Foreman of Grand Jury

Presented in open Court by the Foreman of the Grand Jury in the presence of 14 other members of the Grand Jury, this 14th day of November A. D. 1952.

JOHN R. MATTHEWS,
Clerk of the Circuit Court of Montgomery County.

[File endorsement omitted.]

2 In the Circuit Court of Montgomery County

ARRAIGNMENT AND PLEA OF NOT GUILTY—November 15th, 1952

PRESENT THE HONORABLE EUGENE W. CARTER, JUDGE PRESIDING

[Title omitted]

This day came the State by its Solicitor, and came also the defendant in his own proper person and by attorney; and the defendant's motion to continue the arraignment until a later day being argued by counsel and understood by the Court, and being consid-

ered by the Court, it is considered and ordered by the Court, and it is the judgment of the Court, that the said motion to continue the arraignment of the defendant be and the same is hereby denied.

Thereupon the said defendant being duly arraigned upon the indictment pleaded thereto not guilty, and not guilty by reason of insanity; and on motion of the Solicitor for the State, it is considered and ordered by the Court that the 26th day of November, 1952, be and the same is hereby appointed as the day for the trial of this cause.

It is further ordered by the Court that the Sheriff of Montgomery County summon eighty persons including those heretofore drawn on the regular venire for the week in which this cause is set for trial; the Court proceeds to draw from the jury box in open Court and in the presence of the defendant the number of names, to-wit: thirty persons with the regular jurors heretofore drawn for the week in which this cause is set for trial, to-wit: fifty, making the eighty jurors named in this order.

It is further considered by the Court that a list of the names of all jurors drawn for the week in which this cause is set for trial and those that are here specially drawn together with a copy of the indictment be forthwith served upon the defendant by the Sheriff of this County.

3 In the Circuit Court of Montgomery County

JUDGMENT ON PLEADINGS BY JUDGE EUGENE W. CARTER, PRESIDING
November 26th, 1952

[Title omitted]

This day came the State by William F. Thetford, its Solicitor, and came also the defendant in his own proper person and by attorney; and before the defendant or State announced ready for trial the Court of its own motion ruled that the public at large be excluded from the Court room and from being present at the trial of this cause, and that only members of the bar, witnesses, jurors and Court officials would be allowed to remain in Court during the trial of this cause.

Thereupon the defendant objected to said ruling and moved the Court to let the public remain in the Court room, and upon consideration of said motion the Court is of opinion that said motion should be overuled; it is, therefore, considered, ordered and adjudged by the Court that the motion of the defendant to allow the public to remain in the Court room during the trial of this cause be and the same is hereby overruled, and the defendant duly excepted to said ruling of the Court.

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Thereupon, the defendant made a motion to allow newspaper reporters to remain in the Court room during said trial, and upon consideration of said motion it is considered and ordered by the Court, and it is the judgment of the Court that the motion to allow newspaper reporters to remain in the Court room during said trial be and the same is hereby overruled and the defendant duly excepted to this ruling of the Court.

Thereupon the defendant moves the Court to allow said defendant to have a special stenographer to take down for him the proceedings of said cause, along with the official Court reporter, and upon consideration of said motion the Court is of opinion that the same should be denied. It is, therefore, considered, ordered and adjudged by the Court that the said motion of the defendant to allow a special stenographer to take down for the defendant the proceedings of said cause be and the same is hereby denied, and the defendant duly excepted to this ruling of the Court.

Thereupon the defendant moves the Court to set aside the entire proceedings because neither side had announced ready for trial,
4 and upon consideration of said motion the Court is of opinion that said motion should be denied. It is, therefore, considered, ordered and adjudged by the Court that the motion to set aside the entire proceedings because neither side had announced ready for trial be and the same is hereby overruled, and the defendant excepts thereto.

Thereupon the defendant moves the Court to quash the indictment in said cause on the ground that there were no Negroes on the Grand Jury that returned the indictment in this cause; and upon consideration of said motion the Court is of opinion that the same should be denied. It is, therefore, considered, ordered and adjudged by the Court that the said motion to quash the indictment on the ground that there were no Negroes on the Grand Jury that returned said indictment be and the same is hereby over-ruled, and the defendant excepts thereto.

Thereupon, the defendant made a motion to permit relatives of the defendant to remain in the Court room throughout the trial, and upon consideration of said motion the Court is of opinion that the same should be granted, and it is ordered and adjudged by the Court that the relatives of defendant were permitted to remain in the Court room during the trial of said cause.

Thereupon, the defendant files a motion to exclude the public from the Court room only when the prosecutrix testifies, and upon consideration of said motion the Court is of opinion that the same should be denied. It is, therefore, considered, ordered and adjudged by the Court that said motion be and the same is hereby denied, and the defendant excepts thereto.

Thereupon, the defendant files a motion to quash the jury panel

on the ground that Negroes have been systematically excluded from the jury rolls of Montgomery County, and further that said motion be heard in the absence of the jurors summoned for said trial; and further, that all members of the Montgomery County Board of Jury Supervisors, including the Presiding Judge, who is a member of said Board, be summoned as witnesses to testify in support of said motion; and upon consideration of said motion, the Court is of opinion that said motion, and such evidence as may be presented in support thereof, be heard out of the presence of the jurors. Thereupon the trial Judge announced that he would recuse himself on the ground that he has become a witness in said cause.

The defendant's attorney and the Solicitor were called to the bar in the presence of the defendant, and they stated that the State of Alabama and the defendant had agreed that the Honorable James J. Carter be appointed as Special Judge in the trial of said cause, in accordance with Section 124, Title 13, of the 1940 Code of
5 Alabama. The said James J. Carter was called to the bench and was informed of the agreement that he serve as Special Judge in the case, and asked if he would serve. He stated in addition to agreement of counsel he would prefer to have an appointment by the Governor of Alabama to make it doubly sure that no objection be made to his appointment as Special Judge. The defendant's attorney, in the presence of the defendant, stated that at no time would he make any objection to the appointment of James J. Carter as Special Judge.

Honorable Eugene W. Carter, presiding, thereupon recused himself from sitting at said trial; and the case was then continued for trial until November 28th, 1952.

In the Circuit Court of Montgomery County

APPOINTMENT OF JAMES J. CARTER AS SPECIAL JUDGE

BY GOVERNOR OF THE STATE OF ALABAMA—November 26, 1952

IN THE NAME AND BY THE AUTHORITY OF

THE STATE OF ALABAMA
(ALABAMA)
(GREAT SEAL)

I, GORDON PERSONS

GOVERNOR OF THE SAID STATE

To: James J. Carter

SEND GREETINGS:

Reposing full trust in your Prudence, Integrity and Ability, by virtue of the Power and Authority in me vested as Governor of the State of Alabama hereby commission you a

Special Judge—15th Judicial Circuit of Alabama, to Hear the Jeremiah Reeves Case Beginning Friday, November 28, 1952—in the Absence of Honorable Eugene W. Carter Who Recused Himself on Account of Disqualification By Law.

To have and to hold the said office, together with all the Rights, Powers and Emoluments to the same belonging or in anywise lawfully appertaining, during the term prescribed by the Constitution and Laws of the State of Alabama, if you shall so long demean yourself well.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of State to be affixed at the Capitol, in the City of Montgomery, this 26th day of November in the year of our Lord One Thousand Nine Hundred and Fifty-two.

GORDON PERSONS,
Governor.

(Alabama)
(Great Seal)
BY THE GOVERNOR:
MRS. AGNES BAGGETT,
Secretary of State.

6 In the Circuit Court of Montgomery County

JUDGMENT ON PLEADINGS BY SPECIAL JUDGE JAMES J. CARTER, PRESIDING—November 28th, 1952

[Title omitted]

This day came the State by William F. Thetford, its Solicitor, and came also the defendant in his own proper person and by attorney; and the defendant's motion to grant a continuance of this cause because of change of Judges after another Judge had ruled on numerous motions being duly considered by the Court, it is considered and ordered by the Court that the motion be and the same is hereby denied, and the defendant excepted to this ruling of the Court.

And the defendant files his motion to exclude the public from the Court room only while the prosecutrix testifies, and said motion being considered by the Court, the Court is of opinion that the same should be denied; it is, therefore, considered and adjudged by the Court that the said motion to exclude the public only while the prosecutrix testifies be and the same is hereby denied, and the defendant excepted to this ruling of the Court.

And the defendant files his motion to quash the venire on the ground that Negroes have been systematically excluded from the Jury Rolls of Montgomery County, and the State files its demurrer to said motion to quash the venire; and said motion being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court, and it is the judgment of the Court that said demurrer to the motion to quash the venire be and the same is hereby over-ruled; and issue being joined between the State and the defendant on said motion to quash the venire on the alleged ground that Negroes had been systematically excluded from the jury roll of Montgomery County; and the Court, after hearing all the evidence introduced on said motion, finds from the undisputed testimony that said motion is not sustained and finds affirmatively that no Negroes qualified for jury duty were excluded from the jury roll of Montgomery County solely because of their race or color, and it is, therefore, considered and ordered by the Court, and it is the judgment of the Court that said motion to quash the venire be and the same is hereby denied, and the defendant excepts thereto.

7 Thereupon, the defendant moves the Court to allow the public to remain in the Court room during the trial of said cause, and upon consideration of said motion the Court is of opinion that relatives of the accused, members of the Press and news service, and a stenographer to assist said defendant, if he so desires, be permitted to remain in the Court room during the trial of said cause, and that all others except members of the bar, witnesses, jurors and

Court officials be and they are hereby excluded from the Court room from the time of the beginning of the taking of testimony.

In the Circuit Court of Montgomery County

JURY AND VERDICT—November 29th, 1952

[Title omitted]

The *the* 29th day of November, 1952, came William F. Thetford, Solicitor who prosecutes for the State of Alabama, and came also the defendant in his own proper, person and by attorney; and it appears to the Court that on a former day of this Court the said defendant was duly arraigned and charged upon the indictment and for his plea thereto said he was not guilty, and not guilty by reason of insanity; and it further appearing to the Court that the said defendant has been duly served with a copy of the indictment together with a list of the names of all of the jurors with x regular and special in strict accordance with the former order of this Court heretofore made and entered in this cause; and the trial of this cause having been set for November 26th, 1952, and continued until November 28th, 1952, the said defendant in open Court on November 28th, 1952 announcing himself ready for trial on his said plea of not guilty and not guilty by reason of insanity and the trial of this cause having begun on said November 28th, 1952, and continuing until this day; thereupon came a jury of good and lawful men, to-wit: Carroll J. Griggs and eleven others, who having been duly drawn, selected, empaneled and sworn according to law upon their oaths do say: "We the jury find the defendant guilty as charged and fix his punishment at death."

It is, therefore, considered and adjudged by the Court that the said defendant is guilty as charged in the indictment, and the said defendant was remanded to jail to await the sentence of the law.

8 In Circuit Court of Montgomery County

SENTENCE OF THE COURT—December 3rd, 1952

[Title omitted]

And now upon this the 3rd day of December, 1952, the defendant being now in open Court, and it appearing to the Court that the said defendant was duly convicted of said offense on a former day of this term; and the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing.

It is, therefore, considered and ordered by the Court, and it is

the judgment and sentence of the Court that the Sheriff of Montgomery County, Alabama, shall remove the said defendant JEREMIAH REEVES, JUNIOR, forthwith to Kilby, at Montgomery, Alabama, where he, the said JEREMIAH REEVES, JUNIOR, shall remain in custody until the 23rd day of January, 1953, and on said day in strict accordance with the law, the Warden of Kilby Prison at Montgomery, Alabama, shall put the said JEREMIAH REEVES, JUNIOR, to death by causing to pass through the body of said JEREMIAH REEVES, JUNIOR, a current of electricity of sufficient intensity to cause the death of said JEREMIAH REEVES, JUNIOR, and that the application and continuance of such current of electricity to pass through the body of said JEREMIAH REEVES, JUNIOR, until he, the said JEREMIAH REEVES, JUNIOR, is dead.

And it is further ordered by the Court that the Clerk of this Court shall issue the necessary warrant for the execution of the said JEREMIAH REEVES, JUNIOR, as required by law.

And questions of law arising in this case for the decision of the Supreme Court of Alabama, and now on motion of the defendant, it is considered, ordered and adjudged by the Court that the sentence in this cause be and the same is hereby suspended, pending the defendant's appeal to the said Supreme Court of Alabama.

9 In Circuit Court of Montgomery County

MOTION FOR NEW TRIAL—Filed December 20, 1952

[Title omitted]

Comes the defendant in the above styled cause and moves the Court to set aside the verdict of the jury and the sentence of the Court and to grant unto said defendant a new trial in said cause upon the following separate and several grounds, to-wit:

1. The Court erred in the ruling it made on various motions made by the defendant to which rulings the defendant duly excepted.

2. The Court erred in over ruling various objections made by defendant to the evidence to which rulings the defendant excepted.

3. The Court erred in excluding the public from the trial.

4. The Court erred in excluding the public from the Court room before the trial started.

5. The Court erred in not permitting the defendant's counsel to have the use of a private stenographer to assist him in the trial.

6. The Court erred in making the defendant's counsel's private stenographer leave the Court room.

7. The Court erred in over ruling the defendant's motion to permit counsel's private stenographer to stay in the Court room to which ruling the defendant duly excepted.

8. The Verdict of the jury is contrary to the law and the evidence in the case.

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9. The verdict of the jury is contrary to the law in the case.

10. The verdict of the jury is contrary to the evidence in the case.

11. The verdict of the jury is contrary to the great weight of the evidence.

12. The verdict of the jury is not supported by the great weight of the evidence.

13. The verdict of the jury is contrary to the preponderance of the evidence.

14. The verdict of the jury is not supported by the preponderance of the evidence.

15. The verdict of the jury is not supported by the great preponderance of the evidence.

16. The verdict of the jury is contrary to the great preponderance of the evidence.

10 17. The Court erred in stepping down in the trial and permitting the Honorable James Carter to serve as judge.

18. The Court erred in excluding the press from the Court room at the preliminary proceedings.

19. The Court erred in permitting introduction of certain photographs over the objection and exception of the defendant.

20. The Court erred in refusing to grant the defendant's motion for a continuance upon the ground that material witnesses had been subpoenaed, served and were not present, to which ruling the defendant duly excepted.

21. The Court erred in permitting Dr. Rheling to testify about certain scars and scratches on the defendant's arm over the objection and exception of the defendant.

22. The Court erred in not permitting the defendant's counsel to examine the contents of the jury box.

23. The Court erred on charges it made to the jury.

24. The Court erred in commenting to the jury that the alleged confession made by the defendant was a voluntary one as a matter of law, to which ruling the defendant duly excepted.

25. The Court erred in refusing the grant the defendant's motion for a mis-trial because of the presence of the policeman, Jack Page, on the jury to which ruling the defendant duly excepted.

26. The Court erred in refusing to permit the defendant to prove the grounds defendant gave in requesting a motion for a new trial, upon discovering on the jury a policeman who had an independent knowledge of the facts in the case.

27. The Court erred in permitting the State to ask many questions over the proper objections and exception of the defendant.

28. The Court erred in failing to grant various motions made by the defendant to exclude various answers to illegal questions made by the State to which ruling the defendant duly excepted.

29. The Court erred in permitting the prosecutrix to testify about a conversation had by her with the defendant while being held by

the police incommunicado to which ruling the defendant duly excepted.

30. The Court erred in refusing to permit the defendant to show the entire treatment he received from the police and the hostile and threatening surroundings he was in at the time of the allged conversation between the defendant and the prosecutrix.

11-13 31. The Court erred in refusing to grant a continuance of the arraignment.

JOHN N. McGEE, JR.,
Attorney for Defendant.

[File endorsement omitted.]

14 IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

Before: Hon. Eugene W. Carter, Circuit Judge

Transcript of Proceedings—November 26, 1952

9:08 a. m., the defendant entered the Court Room.

9:30 o'clock A. M.

PRESENT:

The COURT.

WILLIAM F. THETFORD, Esq., Circuit Solicitor, and ROBERT B. STEWART, Esq., Assistant Circuit Solicitor, for the State of Alabama.

JOHN M. McGEE, Esq., for defendant.

JEREMIAH REEVES, JUNIOR, defendant.

The COURT: If you are not a witness in the Jeremiah Reeves case, and not an official of the Court, we are about to start the case, and I am going to clear the Court Room. You are going to have to go out.

Mr. McGEE: May I make a motion, please?

The COURT: I want the Court Room cleared.

Mr. McGEE: I want to make a motion that the public remain in Court. And I have certain other preliminary motions to make.

I would like to move the Court to permit the public to remain until I make all the preliminary motions, which are based on the following grounds:

That the failure to do so violates the constitutional rights of the defendant as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

That is my motion.

15 The COURT: Overrule the motion.

Mr. McGEE: I except to the Court's ruling. And another exception to the Court overruling my motion before it was made.

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The COURT: That applies to the newspaper reporters too, to have the Court Room cleared, except for Jurors and Officials of the Court.

Mr. McGEE: I would like to move the Court to permit the press to remain during the trial on the following grounds:

1. Any exclusion of the press from the defendant's trial is in violation of the defendant's constitutional rights as guaranteed under the Fourteenth Amendment to the Constitution of the United States of America.

2. That the exclusion of the press from the defendant's trial by the Court is a denial of the defendant's rights under the Constitution of the State of Alabama.

The COURT: Motion overruled.

Mr. McGEE: I would like to have an exception entered on the record.

The COURT: All right.

(Exception noted for the defendant by direction of the Court.)

Mr. McGEE: I have a special court reporter, Mr. Ira Fred Watson, who was to be here today, to assist me in this trial. He is not here.

The COURT: What says the solicitor?

The SOLICITOR: He is not one of the regular court reporters, who are sworn officials of this Court.

Mr. McGEE: Mr. Watson has appeared in this Court, and other Courts, as assistant to the official court reporters.

The COURT: He has no connection with our court reporters.

Mr. McGEE: I am asking that he come in as assistant to me.

The COURT: We don't recognize anybody but jurors, lawyers and court officials.

Mr. McGEE: I move that the Court permit the counsel for defendant to have as his assistant a regular stenographic reporter, one who has acted, and now acts on occasions, as the official reporter,
16 as the assistant to defense counsel in the trial of this cause, upon the following grounds:

1. The denial of this right of assistance deprives the defendant, violates the defendant's constitutional rights as guaranteed under the Fourteenth Amendment to the Constitution of the United States.

The COURT: On objection of the Solicitor, the Court having declared, this being a trial for rape, the Court Room would be cleared. The Solicitor objected, and the Court sustains the objection.

Mr. McGEE: I would like to have an exception entered on the record.

The COURT: All right.

(Exception noted for the defendant by direction of the Court.)

Mr. McGee: I would like to move that the entire procedure that has already gone on in this case be set aside upon the following grounds:

1. The entire action by the Court in this case was the start of the case before either side, and especially the defendant, had announced ready.

The Court: Overruled.

Mr. McGee: I would like an exception entered to Your Honor's ruling.

The Court: You may have an exception.

(Exception noted for the defendant by direction of the Court.)

The Solicitor: Will you call the State's witnesses?

(The list of State's witnesses was called by the Clerk.)

The Solicitor: The State announces ready.

The Court: Call the defendant's witnesses.

(The list of Defendant's witnesses was called by the Clerk.)

Mr. McGee: The defendant isn't ready. There are some missing witnesses.

The Solicitor: Are they marked executed?

The Clerk: Yes, sir. John Galston not here. Amos Harvey not here. J. D. Cooks not here.

17 (Side bar conference between the Court and counsel, not reported by the stenographer.)

The Court: Do you announce ready in the Crowder case, No. 5121?

Mr. McGee: There is a motion to quash the indictment on the grounds set forth in the motion.

The Solicitor: Would you like to hear the State on that, or hear him first?

The Court: Yes. Have you any other motions? Which one of these is filed first? You have two motions here, first stating to quash it because of the defendant's custody, and so forth.

Mr. McGee: I have four grounds.

The Court: I thought you had four motions. I have four affidavits.

Mr. McGee: Yes, sir. This is the affidavit.

The Assistant Solicitor: On the motion filed by the defendant, the State demurs as to that motion, and further moves to strike the motion, and requests permission to file the demurrer to strike in writing. The authorities are uniform in this State that any motion to quash the indictment comes too late after the defendant has entered a plea of not guilty. And there is a leading case on that,

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Whitehead vs. The State. All of these motions and the grounds therefor, come too late, since this defendant has been arraigned and entered a plea of not guilty.

The COURT: I would like to hear from you, Mr. McGhee.

Mr. MCGHEE: The defendant objects to that motion made to strike the motion. There is no such thing as a demurrer to a motion, or motion to strike a motion. If he can rely on a motion, I can make a motion to strike, and we might go on for the next ten years. There is no such thing as a demurrer to a motion. If I have proved it at this time it would constitute a question of law by which Your Honor would grant the motion.

The COURT: The Court will rule it is the law when it comes after the plea is made it comes too late. The motion to quash, I am going to overrule it unless you show me some cases that I am not familiar with. Any motion to quash an indictment after a plea is entered, as there was in this case, a plea of not guilty, not guilty by reason of insanity, comes too late.

Mr. MCGEE: At the time of arraignment the defendant
18 made written motion to, one, to continue the arraignment to permit him to have time to file protest to the indictment or, two, to permit him to file written pleas after the indictment, which motions was, of course, overruled and the question presented by the first motion was whether or not the State could force the defendant to go ahead and plead and say, "how do you plead right now?", and plead in writing, when the defendant hadn't been served and so certified.

The COURT: You pleaded orally. We don't require a written plea in this Court.

Mr. MCGEE: Other than written pleas, the defendant should have known what he was going to be charged with in order to prepare and investigate the case so he could attack it even though it was orally.

Whereupon, the Solicitor called George Mosely, Jr., who, upon having been duly sworn, was examined and testified as follows:

By The SOLICITOR:

Q. What is your name and occupation?

A. George Mosely, Jr., Chief Deputy Sheriff for Montgomery County, Alabama.

Q. Did you serve the defendant, Jeremiah Reeves, Junior, with a copy of the Indictment and Venire List in Case No. 5121?

A. I did. I personally served him on November 17th with a copy of the Indictment and Venire List in Case No. 5121. I was accompanied by Deputy Shivers when I served him.

The COURT: The Court holds the defendant had been given a copy of the indictment after arraignment, and given a copy of the jury venire to be tried by.

The Court holds the motion to quash the indictment comes too late, after the plea of not guilty, and not guilty by reason of insanity.

Mr. McGEE: If I can prove these things as alleged to the satisfaction of the Court and law, then the entire proceedings against this defendant are null and void, and it is never too late to attack such a proceeding.

The COURT: You and the Supreme Court differ. The Supreme Court has held right straight out differently.

Mr. McGEE: I would like to file the motion and affidavit in support of it.

19 (Defendant's motion to quash the indictment marked "Defendant's Exhibit A, 11/26/1952, WHL.")

(Affidavit of defendant market "Defendant's Exhibit B, 11/26/1952, WHL.")

Mr. McGEE: The motion has been filed, and I would like the Court to permit the defendant to try to prove the motion, and grant the defendant a hearing on it.

The COURT: The Court has to overrule your motion because the Supreme Court has held if it comes at this stage it comes too late.

Mr. McGEE: I would like to have an exception entered on the record.

(Exception noted for the defendant by direction of the Court.)

Mr. McGEE: At this time I have a motion here to request the Court to permit the public to remain during the trial of this case upon the following grounds:

"1. Exclusion of the public is a violation of the defendant's constitutional rights as guaranteed by the Fourteenth Amendment under the United States Constitution."

The COURT: It doesn't apply to rape cases or kindred offenses, the purpose being not to embarrass the females who are in the case. Overrule the motion. Under the Constitution of Alabama and our laws, the Court would be as qualified as any to judge it, of course, and he has a legal right so to do.

Mr. McGEE: I understand the ruling is based on the State law and is not based on the constitutional provision?

The COURT: Yes.

Mr. McGEE: I want to file this motion: "Comes the defendant in the above styled cause and moves the Court to permit the relatives of the defendant to remain in the Court Room throughout his trial upon the following grounds:

1. Failure to permit this violates the defendant's constitutional

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rights as guaranteed by the Constitution of the State of Alabama and violates the defendant's constitutional rights as guaranteed by the Fourteenth Amendment of the Constitution of the United States."

The COURT: I think the relatives of the defendant should stay in there whether they are witnesses for the defendant, or not.

20 The SOLICITOR: We agree with that.

Mr. McGEE: Your Honor realizes the State really is the public.

The COURT: It is left in the discretion of the judge.

(Motion of defendant to permit the public to remain during the trial marked "Defendant's Exhibit C, 11/26/1952, WHL.")

(Defendant's motion to permit relatives of the defendant to remain in the Court Room marked "Defendant's Exhibit C-1, 11/26/1952, WHL.")

Mr. McGEE: The defendant moves the Court to exclude the public and so inform the public that they are excluded only while the prosecutrix testifies. We say we should have a public trial, almost throughout the trial of the case, except when the prosecutrix is testifying, so the prosecutrix would not be embarrassed, and this is the motion I have here I want to file.

The COURT: I cannot grant the motion. I have already ordered the clearing of the Court Room. I would have to deny a public trial.

Mr. McGEE: I would like to have an exception on the record.

(Exception noted for the defendant by direction of the Court.)

(Motion to exclude public only while prosecutrix testifies, marked "Defendant's Exhibit D, 11/26/1952, WHL.")

Mr. McGEE: I think this is my last one. This is a motion to quash the venire in the case this is rather prejudicial argument. I would like to have this heard in the absence of the panel.

The COURT: Let me see the motion first.

Mr. McGEE: I am going to add a ground to that here.

The COURT: If this motion is granted the Court, the presiding judge, would have to disqualify himself and have to continue this case until Friday, and have a Special Judge appointed to try the case, because I am a member of the Jury Commission. And this motion the Court would have to grant because it is too late to attack the venire. And being a member of the Jury Commission, the Jury Commission being attacked, and being a witness, it would be necessary for me to excuse myself and have to have a Special Judge

21 appointed, and the case would have to be continued until Friday morning at 9:30.

Mr. McGEE: I would like to have some little time relative to the motion.

The COURT: The Court has granted your motion to continue the case until Friday at nine o'clock in the morning, and have to have a Special Judge to try the case. I will have to excuse myself as being a member of the Jury Commission. The Jury Commission is being attacked, and I couldn't be a witness and take any part in the trial. The case is set for 9:30 o'clock Friday morning, and we will have another judge to try it.

22 (Defendant's motion to quash the venire marked "Defendant's Exhibit E, 11/26/1952, WHL.")

DEFENDANT'S EXHIBIT A

In the Circuit Court of Montgomery County Criminal Term

Case No. 5121

THE STATE

vs.

JEREMIAH REEVES, JR.

Comes the Defendant in the above styled cause and moves the court to quash the indictment upon the following grounds:

1. The Defendant, after nearly three (3) days of continual questioning and being subject to mental torture by State officers, confessed to said charges. During this time the Defendant was held incommunicado and said confession was obtained by violation of the Defendant's constitutional rights as guaranteed by the 14th amendment to the United States Constitution and said confession was used before the Grand Jury in securing this indictment.

2. Negroes are systematically excluded from the Grand Jury of Montgomery County and were excluded from the Grand Jury rendering this indictment in violation of the Defendant's said rights under said 14th amendment.

3. There were no negroes serving on said Grand Jury that rendered this indictment and this was a violation of the Defendant's constitutional rights under said amendment of the United States Constitution.

4. Said Grand Jury was called back specially to hear only cases against Defendant and that discrimination violated Defendant's said rights under said 14th amendment.

(S.) JOHN N. MCGEE, JR.,
Attorney for Defendant.

As part of said motion Defendant requests that subpoenas be issued to Circuit Judge Walter B. Jones, Sheriff G. A. Mosley, Circuit Clerk John Mathews, Probate Judge W. W. Hill, and Circuit Judge

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Eugene Carter, all as jury commissioners to produce the jury
23 box of Montgomery County or in the alternative to request the appearance before the court at the hearing of this motion of all Montgomery County citizens in the jury box so their race and color might be proportionately determined.

(S.) JOHN N. MCGEE, JR.,
Attorney for Defendant.

DEFENDANT'S EXHIBIT B

In the Circuit Court of Montgomery County Criminal Term

Case No. —

STATE OF ALABAMA,
Montgomery County:

AFFIDAVIT

My name is Jeremiah Reeves, Jr. I am seventeen (17) years old. I quit school in the 8th grade. I am a member of the negro race. About 2:10 in the afternoon on November 10th, 1952 I was arrested by Mr. H. P. Armstrong and Mr. Talley, Deputy Sheriffs of Montgomery County. They carried me to the county jail in Montgomery county. They accused me of raping and attempting to rape several white women and they told me I was going to the electric chair for it. They kept me in the county jail for about five minutes and then carried me to the Kilby State Penitentiary a few miles from Montgomery. I told them I wanted to either telephone my Mamma or see her. They did not let me do this. When I got to Kilby I was questioned by so many people I don't remember all of them. Some of them cursed me and threatened me. Different police officers and one reporter named Joe Azbell, who I never will forget, questioned me at different time until Monday night they finally let me sleep. About the time I went to sleep Mr. O. R. Deeds, Depute Warden of Kilby Penitentiary, woke me up and took me to the room with the electric chair in it and questioned me some more. I finally told him that I had tried to rob Mrs. Frances Prescott. I only did this after Mr. Deeds kept on telling me to go ahead and say you did it. That's the only thing that will keep you out of that chair. Go on and plead guilty to it and you won't go to the chair. That Monday I was questioned constantly from 2:10 P. M. to 7:30 P. M. Early Tuesday morning the officers started questioning me again.
24 They forced me to strip naked and some man named Dr. Rheling, State Toxicologist, came out and took several pictures of me while I was that way. I was then questioned all day Tuesday until first dark. Warden Deeds and all the other officers kept telling me to plead guilty to all those rapes. They kept saying that was the only way I would keep out of the chair. The Warden

and some others said they would help me if I said I did these things. They told me it would save me from the chair if I pleaded guilty. Wednesday morning they showed me some papers and said the best thing for me to do was to go on and say I did them. The Solicitor came out and listened to some of the questions. After about two hours more of questioning on Wednesday morning I finally said I did these things. I did not do these things. I only said I did them because the police told me it would save me from the chair if I admitted doing these things and pleaded guilty. While I was out at Kilby the prison doctor took some fluid out of my spine and also some blood out of my left arm over my protest. They would not let me contact anyone or see anybody until my Mamma was finally let in to see me about five o'clock in the afternoon on Wednesday. On Thursday I was taken down to the Montgomery police headquarters where the police ordered me to strip naked again and they took eight or nine pictures of me. I was carried back to Kilby then. On Saturday I was taken to the Montgomery County Court and at 9:00 A. M. I was ordered to plead to three (3) indictments, two (2) for rape and one (1) for robbery. After court they left me in the county jail. These indictments were not given to me or served on me until Monday, November 17th, 1952. I have signed some kind of paper I think but I do not know what was in it.

Signed the 26 day of November, 1952.

(S.) JEREMIAH REEVES, JR.

STATE OF ALABAMA,
Montgomery County:

Before me, L. H. Walden, Notary Public in and for said State and County, personally appeared Jeremiah Reeves, Jr. who upon being identified by me upon oath doth depose and say and swear that the above statement is true and correct and was voluntarily given by him and signed by him on the day this bears date.

(S.) L. H. WALDEN,
Notary Public in and for Said County and State.

25 DEFENDANT'S EXHIBIT C

In the Circuit Court of Montgomery County Criminal Term

Case No. —

THE STATE

vs.

JEREMIAH REEVES, JR.

Comes the Defendant in the above styled cause and moves the court to permit the public to remain during the trial of his case upon the following grounds:

1. Exclusion of the public is a violation of the Defendant's constitutional rights as guaranteed by the 14th amendment under the United States Constitution.

(S.) JOHN N. MCGEE, JR.,
Attorney for Defendant.

DEFENDANT'S EXHIBIT C-1

In the Circuit Court of Montgomery County Criminal Term

Case No. —

THE STATE

vs.

JEREMIAH REEVES, JR.

Comes the Defendant in the above styled cause and moves the court to permit the relatives of the Defendant to remain in the court room through out his trial upon the following grounds:

1. Failure to permit this violates the Defendant's constitutional rights as guaranteed by the Constitution of the State of Alabama and violates the Defendant's constitutional rights as guaranteed by the 14th amendment of the Constitution of the United States.

(S.) JOHN N. MCGEE, JR.,
Attorney for Defendant.

DEFENDANT'S EXHIBIT D

In the Circuit Court of Montgomery County Criminal Term

Case No. —

THE STATE

vs.

JEREMIAH REEVES, JR.

26 Comes the Defendant in the above styled cause and moves the court to exclude the public and so inform the public that they are excluded only while the prosecutrixs testifies upon the following grounds:

1. Permanent exclusion of the public from all phases of the Defendant's trial is a violation of the Defendant's constitutional rights as guaranteed by the 14th amendment to the Constitution of the United States.

(S.) JOHN N. MCGEE, JR.,
Attorney for Defendant.

DEFENDANT'S EXHIBIT E

In the Circuit Court of Montgomery County Criminal Term

Case No. —

THE STATE

vs.

JEREMIAH REEVES, JR.

Comes the Defendant in the above styled cause and moves the court to quash the venire in said case upon the following grounds:

1. The Defendant's constitutional rights as guaranteed by the 14th amendment to the Constitution of the United States has been violated in that there are no members of the negro race on said venire and said Defendant is a member of the negro race.
2. Negroes, because of their race and/or color, have been systematically excluded from the jury in violation of the 14th amendment under the Constitution of the United States.
3. Negroes, because of their race, are systematically excluded from Montgomery County juries in violation of the 14th amendment to the Constitution of the United States.

(S.) JOHN N. MCGEE, JR.,
Attorney for Defendant.

27 10:10 o'clock A. M.

Adjourned until Friday, November 28th, 1952, at 9:30 O'clock A. M.

28 Reporter's and Judge's Certificates to foregoing transcript omitted in printing.

29 In the Circuit Court of Montgomery County, Alabama

[Title omitted]

Before Hon. JAMES J. CARTER, Specially Presiding

TRANSCRIPT OF PROCEEDINGS—November 28, 1952

9:12 O'clock A. M., the Defendant Entered the Court Room

9:30 o'clock A. M.

PRESENT:

The COURT.

WILLIAM F. THETFORD, ESQ., Circuit Solicitor, and ROBERT B. STEWART, ESQ.; Assistant Circuit Solicitor, for the State of Alabama.
JOHN N. MCGEE, ESQ., for defendant.
JEREMIAH REEVES, JUNIOR, defendant.

COLLOQUY

The COURT: I want the record to show in this case in order to get the preliminary matters before the trial of this case, that Judge Eugene W. Carter recused himself from the bench; that I am sitting as presiding judge of this trial by appointment of the Governor of the State of Alabama, and by virtue of the Commission issued pursuant to that appointment.

And that further, I am sitting with the express agreement and consent of the Solicitor representing the State of Alabama and the attorney representing the defendant in this cause. Is there any objection to that appearing of record?

The SOLICITOR: No.

MR. MCGEE: No.

The COURT: The record will so state.

The SOLICITOR: We would also like, if it is agreeable, to present this agreement. We would like to have it in the
30-31 record.

The COURT: If it is agreeable, all right.

MR. MCGEE: As far as agreement is concerned, as far as having you as special judge, according to that I have no objection, but as

to having a change of judges after this case was commenced, I do have an objection. That is something which I couldn't agree.

The SOLICITOR: You had no objection.

Mr. McGEE: If the Court is going to excuse and recuse itself and having a special judge called in I think that such action will be over my protest. But having done that, I am willing to continue with Judge James J. Carter only.

The COURT: Under those circumstances the case will proceed.

32 Mr. McGEE: I have a motion here that the public be permitted to remain during the trial of this cause.

The COURT: That motion will be acted upon in due course when the trial of this cause begins and after the Jury is empanelled and sworn. You may resubmit that motion at that time if you care to do so. I might state at this time the public will be excluded from this trial under the provision of the discretion vested in me by the Constitution of the State of Alabama and the Statute. The only exception to that, representatives of the press will be allowed to be present during the trial of this case, and also that the family and relatives of the accused will be allowed to be present during the trial of this case, as are the officers and officials of this Court, and the members of the Bar.

Mr. McGEE: I have here another motion I would like to file at this time. This is a motion to grant a new trial on the ground they cannot change judges after the other judge has passed on numerous motions.

The COURT: Let the record show upon Judge Eugene W. Carter announcing he had recused himself the Solicitor and attorney for the defendant suggested that I serve as special judge to try this case, and that pursuant to that agreement I agreed to serve in the trial of this case if acceptable, and by appointment of the Governor of the State of Alabama. And this is the appointment, and I present to you the Commission issued for that appointment. The motion is overruled.

Mr. McGEE: I would like an exception on the record.

(Exception noted for the defendant by direction of the
33 Court.)

Mr. McGEE: May the record show the defendant was not consulted and no agreement reached with him personally?

The COURT: Let the record show what Mr. McGee said.

Mr. McGEE: This is a motion for a continuance. My ground for the motion for a continuance is for the reason:

1. He has not received a copy of the venire with the indictment in the case to be tried. He had received three copies of the indictment, and the venire list was attached to that, which said robbery. We contend such action is under the law—the law should be strictly

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complied with, and the law means in each case a copy of the venire in each case should be served on him. It should be served on him at least one day prior. I think in striking the jury that is misleading, because the defendant don't know which case he was going to be tried on. And he received one copy of the venire, and that was marked robbery.

The SOLICITOR: He has been served with a copy of the venire, and I think that is all the statute contemplates and requires.

The COURT: I agree with that. The motion is overruled.

Mr. McGEE: Will you grant me an exception?

(Exception noted for the defendant by direction of the Court.)

The COURT: Any other motions?

Mr. McGEE: Not at this time, Your Honor.

The SOLICITOR: We also have proof that he was served with three copies of the venire. We are willing to put evidence on to that effect.

The COURT: If you want to do so, the Court will hear evidence on it.

Mr. McGEE: That motion was overruled without any evidence from the defendant. The defendant made the motion and he is entitled to present all his evidence. Without hearing any evidence Your Honor overruled the motion and gave your ruling on the motion.

The COURT: Let the ruling of the Court stand, and show that the attorney for the defendant objects to the introduction by the State of evidence showing three copies of the venire was served on the defendant. Let us proceed.

34-35 Mr. McGEE: I would like to have the record show there is a statement by the solicitor he can show that.

The SOLICITOR: An offer by the State.

The COURT: Let it so show. Any further motions to be heard by the Court at this time? If not, we are ready to proceed with the qualifying of the jury.

Mr. McGEE: Except for the motion set for hearing this morning.

The COURT: I asked you if you have any motions to present. Have you agreed to present that motion at this time? It has not been presented to me.

Mr. McGEE: It was presented to Judge Carter, and he recessed the hearing.

The COURT: All right, let us have the hearing. Let the record show the motion is filed in open Court.

(Marked "Defendant's Exhibit 2, 11/28/1952, WHL.")

The COURT: I am ready to hear you on the motion.

The SOLICITOR: The State would like to file this demurrer to the motion to quash the venire.

(Marked "State's Exhibit 2, 11/28/1952, WHL.")

Mr. McGee: I would like to have the hearing in the absence of the panel.

The Court: As to the demurrer too?

Mr. McGee: Yes, sir.

The Court: All right. The hearing on the motion and demurrer will be held in Chambers. We will go back to Judge Jones' Chambers and hear this motion.

Defendant's Exhibit 1—Omitted. Printed side page 25 ante

36 Defendant's Exhibit 2.

In the Circuit Court of Montgomery County Criminal Term

Case No.—

The State

vs.

Jeremiah Reeves, Jr.

Comes the Defendant in the above styled cause and moves the court to quash the venire in said case upon the following grounds:

1. The Defendant's constitutional rights as guaranteed by the 14th amendment to the Constitution of the United States has been violated in that there are no members of the negro race on said venire and said Defendant is a member of the negro race.

2. Negroes, because of their race and/or color, have been systematically excluded from the jury in violation of the 14th amendment under the Constitution of the United States.

3. Negroes, because of their race, are systematically excluded from Montgomery County juries in violation of the 14th amendment to the Constitution of the United States.

(S.) John N. McGee, Jr.,
Attorney for Defendant.

STATE'S EXHIBIT 2.

In the Circuit Court of Montgomery County Criminal Term, November, 1952

Case No.—

THE STATE

vs.

JEREMIAH REEVES, JR.

Now comes the State of Alabama by and through William F. Thetford, Circuit Solicitor of the 15th Judicial Circuit of Alabama, and demurs to the motion to quash the venire heretofore filed in this cause by the Defendant, and, as grounds for said demurrer, separately and severally assigns the following:

1. The Defendant does not allege that there has been any
37 systematic exclusion of members of the Negro race from the jury panels of Montgomery County by reason of their race, creed or color in violation of the Constitution of the United States.

2. The defendant is not entitled to trial by jury composed in whole or in part by members of his race.

3. It does not affirmatively appear that the Jury Commission of Montgomery County has violated the defendant's constitutional rights because there are no members of the Negro race on the venire to try this cause.

4. The allegation that Negroes are systematically excluded from juries in Montgomery County does not amount to a violation of Defendant's constititutional rights.

5. It is not alleged that the systematic exclusion of Negroes from the juries of Montgomery County has been by the Jury Commission of said county.

6. For ought that appears any exclusion of Negroes from juries results from striking of said juries by counsel rather than by action of the Jury Commission.

7. The allegation that there are no members of the Negro race on the venire in said cause is a mere conclusion of the pleader.

8. The allegation that Negroes are systematically excluded from juries in violation of the 14th Amendment of the Constitution of the United States is a mere conclusion of the pleader.

9. The systematic exclusion of "Negroes" from the juries of Montgomery County would not amount to a violation of any constitutional right of the Defendant.

38 10. The systematic exclusion of Negroes because of their race and/or color from the jury is not a violation of the Defendant's rights under the Constitution of the United States.

(S.) WILLIAM F. THETFORD,
Circuit Solicitor.

HEARING ON DEFENDANT'S MOTION TO QUASH VENIRE

9:50 o'clock A. M.

Chambers of Judge Walter B. Jones.

Present:

The COURT.
The SOLICITOR and ASSISTANT SOLICITOR.
The Defendant and his Counsel.

The ASSISTANT SOLICITOR: You have a copy of the motion before you. The gist of the demurrer is this. While he has alleged that negroes have been excluded, he has failed to allege the essential element that the jury commission of Montgomery County has systematically excluded negroes because of their race, creed or color from the jury box or the jury roles. The first paragraph of his motion there is that this defendant's constitutional rights have been violated because there are no members of the negro race on said venire, the defendant being a negro. That particular paragraph does not allege any systematic exclusion, does not allege any action of the Board of Jury Commission systematically excluded negroes and is, therefore, faulty.

The second paragraph states negroes are systematically excluded from the jury in violation of their constitutional rights. It fails to state that the Jury Commission of Montgomery County has systematically excluded them. It doesn't allege that they have been excluded from the jury panel. It just says the jury. Any number of them have been struck from the juries in this County.

As to the third paragraph. First he is going to have to correct the spelling of negroes. I have never seen the name spelled like that. He alleges—he says: "negores, because of their race, are systematically excluded from Montgomery County juries in
39 violation of the 14th amendment to the Constitution of the United States." What I have said about the other paragraphs applies to this. He has not alleged the Jury Commission of Montgomery County has systematically excluded. He fails to allege in the three paragraphs anything that violates the laws of the State of Alabama.

The COURT: I am going to hold in a case of this kind the first paragraph states nothing at all on which this Court would be required to pass. I am holding that paragraphs two and three do state

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a question which the Court has arranged to hear and pass on. I, therefore, overrule the demurrers to the motion.

Mr. McGee: I would like to amend paragraphs two and three by inserting the word "box" after "jury".

I would like to amend grounds two and three to read like this: "Negroes, because of their race and their color, have been systematically excluded by the Montgomery County Jury Commission from the Montgomery County jury box as a whole, in violation of the 14th amendment to the Constitution fo the United States".

The Court: All right. The amendment is allowed. Are we ready to proceed?

Mr. McGee: Yes, sir, Your Honor.

The Assistant Solicitor: Is that the only amendment you make?

Mr. McGee: Yes, sir.

The Assistant Solicitor: The State refiles its demurrers.

The Court: Let us proceed.

Mr. McGee: I have requested subpoenas for the different members of the Jury Commission to appear before the Court with the jury box for the purpose of determining the number of negroes in the jury box, and the number of white people, and check them off the gross total to see whether they are white and colored, and for that purpose I ask that the jury box be opened in court. I think the only way that question can be proved is by going into the jury box and determining the number of white and colored jurors in it.

The Court: The Court is going to rule you are not going to be allowed to go into the jury box for the purpose of determining the number, or color, or creed, or religion, or race of the jurors in the box.

Mr. McGee: I would like to have an exception.

The Court: You may have an exception to that.

(Exception noted for the defendant by direction of the Court.)

The Assistant Solicitor: Let the record show the members of the Jury Commission are present. Let the record show that.

The Court: Judge Hill has a doctor's certificate. Judge Hill is feeble and infirm.

Mr. McGee: I won't make any point of that. I didn't realize he was in bad health or I wouldn't have brought it up.

I would like to make a motion I be permitted to go into the jury box on the ground that by going into it it can be determined whether or not they are systematically excluded. I want to go into it for the purpose of determining whether they have proportional representation.

The Court: The Court rules you will not be allowed to go into the jury box. You may establish that with any testimony you would

like to present along that line. If it becomes an issue for decision in the case we will meet it when we get to it.

Mr. McGee: I would like to have an exception.

(Exception noted for the defendant by direction of the Court.)

EVIDENCE ON BEHALF OF THE DEFENDANT ON MOTION TO QUASH THE VENIRE

EUGENE W. CARTER, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGee:

Q. You are a member of the jury commission of Montgomery County?

A. I am.

Q. Do you know the approximate number of names in the jury box?

A. We have quite a good many. I haven't the slightest idea. I couldn't give within five hundred how many there were in there.

Q. Do you recall when Judge Jones was running for re-election?

A. Yes, sir; I remember when Judge Jones was running for re-election.

41 Q. Did you ever hear him make any reference to the number of names in the box?

A. No; I never did.

The ASSISTANT SOLICITOR: We object to this line of questioning.

The WITNESS: I haven't the slightest idea how many are in there. Any time I meet a member on the jury I have discussed with him about putting names in, and if he knows any good, substantial men in the community to send in their names.

By Mr. McGee:

Q. Does every member of the Commission contribute names to the box?

A. They do.

Q. Is it your custom to take names from different clubs like the Elks, and so forth?

A. We have done that. And I have asked negroes. My first recollection of putting them in there, I once went to the clubs, lists were made up of those who were willing to serve, and secured the first ones I put in there. Every time we got the names of a few negroes they were put in, of course. I remember one in particular—

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his name is Smith; I don't recall his first name—in the insurance business. I called him in the office after he served on the jury and asked him would he be kind enough to get me a list of negroes, intelligent, honest, trustworthy type of negro, who were the type of negroes, as far as possible, the same type of white people we had on the jury. He submitted the names of at least twelve I know of which I presented to the Jury Commission myself. I just remember, Morris Smith is his name. That was two or three years ago and from time to time we have asked people to send in names. It is particularly hard for us to put in negroes without knowing them. We have never put in anybody at all unless we have a list from somebody. I know the other members of the Jury Commission have done the same thing. As far as I remember, when I have attended a meeting of the Jury Commission, I have never attended a meeting where a negro was turned down because of the fact he was a negro. As a matter of fact, I don't believe I have attended a meeting where a negro was turned down, where somebody has submitted us the name of any negro.

Mr. McGee: I move to strike the answer on the ground it is not responsive to the question.

42 The Court: Objection overruled.

Mr. McGee: I would like to have an exception.

(Exception noted for the defendant by direction of the Court.)

By the Court:

Q. Do you apply the same qualifications for negroes and white people?

A. Absolutely. We follow the same qualifications for everybody in putting them in the jury box. There is a lot of regulations we have to follow, various means we have to follow getting people who are intelligent, names of people to go in the jury box, both white and black.

Mr. McGee. I move to strike all that because it is not responsive.

The Witness: I am answering the Judge, not you.

The Court: The motion is overruled.

Mr. McGee: I would like to have an exception.

(Exception noted for the defendant by direction of the Court.)

By Mr. McGee:

Q. Have you an idea how many negroes you have?

A. No; I have not. I know there are a good many in there. I wouldn't know, anymore than I could tell you how many negroes vote. I don't know. I know there is a number of them. I do know this; I have tried to get them. I mean high-class negroes.

Q. How long have you been a Circuit Judge here?

A. Eighteen years in January.

Q. You were a Circuit Judge at the time this jury law was passed, were you not?

A. I believe it was the law before I went on it. My recollection is it was the law and they repassed it shortly after that. I may be wrong. That is my recollection.

Q. You have been on the Jury Commission ever since you have been Judge?

A. I believe it was the first year I was elected that we filled the jury box. They already had the box and everything else. And in 1939—I believe I am right—there was a local Act passed with a number of supplementary Acts, if I am right. I could be wrong because I haven't given it any thought. When I was first
43 elected judge my recollection is the local statute was the thing we went by.

Q. I believe the normal practice is there are four criminal terms during the year and approximately three civil terms?

A. That is right, unless we have an extra session of court, as we have this term. The jurors are taken out of the box, except in war times. That is the only time we didn't do that. The name is put back in the jury box about every eighteen months.

I might say—what we want to get is the truth—since I have been judge we have had as many as three negroes called for one term. We never turned any back, if he was a negro, for a white man. It is possible a negro's name would not be drawn, but it never was thrown back. And I have never seen the jury box anywhere near empty. The most I have seen was three at one time.

Q. How many do you draw out for a regular term of court?

A. You draw about fifty, but you never get fifty here. Usually out of fifty you get thirty-five if you are doing good.

Q. If you don't have enough you draw an additional supply?

A. That is right. The same thing comes up each time we draw. Lots of them move away from here. We draw a lot of them who have died, and their names are not removed from the jury roles. We don't know about that until the names are drawn. Some men are out of the State, and others sick. The only way to get them out of the jury box is to have somebody notify us they are dead, or have left here, unless it is somebody we know, somebody very well known, some prominent person we know.

Q. Do you know the approximate number of colored registered voters in this County?

A. I don't know.

Q. That list is available, is it not?

A. Naturally, they have a list of them. Whether they carry them

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black and white, or not, I don't know. They did at one time. Whether they are listed as one group, I don't know.

Q. Do you ignore the voter list?

The COURT: I don't know what the voters' list has to do with the jury.

Mr. McGEE: I want to get the number of qualified colored voters.

The WITNESS: What has that to do with the jury commission? There are so many people who cannot serve on the jury. You
44 have teachers who are engaged in teaching, they cannot serve; no doctor can serve; no dentist can serve. We have made it a rule not to call a preacher for jury duty. The jury commissioners feel it would be embarrassing for him when some member of his congregation was up for trial. For that reason we haven't done that in the past. They are not excused under the law. There are a lot of others disqualified, that the law disqualifies. We do not.

By the COURT:

Q. The statute exempts persons engaged as railroad engineers?

A. That is right. We have never put in anybody of that grade.

By Mr. McGEE:

Q. Aren't there around approximately twenty-eight hundred to three thousand colored voters in the County?

A. I couldn't tell you.

Mr. McGEE: Could I have the voter record brought here?

The COURT: I don't see what the voting list has to do with this phase.

Mr. McGEE: For the purpose of picking men of good character.

The COURT: To pick a man of good character they have several tests. I see no value of the voting list, because many people on there mostly appear to be good jurors in your opinion. I think it is irrelevant to this particular hearing. If you care to show what the number is, I will let it in for what it is worth.

Mr. McGEE: I want to show approximately the number of qualified colored voters in the County.

The WITNESS: In all fairness to both sides, this ought to be read into the record. Title 30, Chapter 1, Section 3: "Persons exempt from jury duty.—The following persons are exempt from jury duty, unless by their own consent: Judges of the several courts; attorneys at law during the time they practice their profession; officers of the United States; officers of the executive department of the state government; sheriffs and their deputies; clerks of the courts and county commissioners; regularly licensed and practicing physicians; dentists; pharmacists; optometrists; teachers while actually engaged

in teaching; actuaries while actually engaged in their profession; officers and regularly licensed engineers of any boat plying the waters of this state; passenger bus driver-operators; and
45 driver-operators of motor-vehicles hauling freight for hire under the supervision of the Alabama public service commission; railroad engineers, locomotive firemen, conductors, train dispatchers, bus dispatchers, railroad station agents, and telegraph operators when actually in sole charge of an office; newspaper reporters while engaged in the discharge of their duties as such; regularly licensed embalmers while actually engaged in their profession; radio broadcasting engineers and announcers when engaged in the regular performance of their duties; the superintendents, physicians, and all regular employees of the Bryce hospital in Tuscaloosa county and the Searcy hospital in Mobile county; officers and enlisted men of the national guard and naval militia of Alabama, during their terms of service; and convict and prison guards while engaged in the discharge of their duties as such."

"Section 20. Jury roll and cards.—The jury commission shall meet in the court house at the county seat of the several counties annually, between the first day of August and the twentieth day of December, and shall make in a well bound book a roll containing the name of every male citizen living in the county who possessed the qualifications herein prescribed and who is not exempted by law from serving on juries. The roll shall be arranged alphabetically and by precincts in their numerical order and the jury commission shall cause to be written on the roll opposite every name placed thereon the occupation, residence and place of business of every person selected, and if the residence has a street number it must be given. Upon the completion of the roll the jury commission shall cause to be prepared plain white cards all of the same size and texture and shall have written or printed on the cards the name, occupation, place of residence and place of business of the person whose name has been placed on the jury roll; writing or printing but one person's name, occupation, place of residence and of business on each card. These cards shall be placed in a substantial metal box provided with a lock and two keys, which box shall be kept in a safe or vault in the office of the probate judge, and if there be none in that office, the jury commission shall deposit it in any safe or vault in the court house to be designated on the minutes of the commission; and one of said keys thereof shall be kept by the president of the jury commission. The other of said keys
46 shall be kept by a judge of a court of record having juries, other than the probate or circuit court, and in counties having no such court then by the judge of the circuit court, for the sole use of the judges of the courts of said county needing jurors. The jury roll shall be kept securely and for the use of the jury commission exclusively. It shall not be inspected by any one except the members

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of the commission or by the clerk of the commission upon the authority of the commission, unless under an order of the judge of the circuit court or other court of record having jurisdiction."

"Section 21. Qualifications of persons on jury roll.—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty-one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder his name may be placed on the jury roll and in the jury box. No person over the age of sixty-five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so."

This is the amended provision I have read. That is part of our duty as the jury commission. There are five members of the jury commission, and it takes three of them to constitute a quorum. We have meetings, sometimes twice a year, sometimes more. During the summer we have a meeting at somebody's house for breakfast, and then go out all through the County canvassing names.

By Mr. McGee:

Q. When you select jurors from these clubs, do you check up the list of membership?

A. They do that in the club among themselves, find out how many can serve. We know where they live, the names of the members, and we check to find out how long he has been living around here, find out everything we can about him.

Q. You do have some on the club list you don't know?

47 A. Oh, yes. We find out all about him if we don't know the member, and if he qualifies, we take him.

Q. From how many clubs approximately have you got a list of club members?

A. I couldn't answer that. Most all of them here.

Q. Do you request lists from colored clubs?

A. Not that I know of. I never go to the negro clubs. The ones I have asked to help me have been somebody I know, negroes I know.

Q. I am talking about club lists.

A. I don't know because I don't go in their clubs.

Q. You don't go in their clubs?

A. I don't go in them. I do know—this is way, way back—I do

know one club. We had several members out of that club. In fact, we had at least twenty out of the club. That is when that meets in an insurance office. They call it the Montgomery Improvement Association or Society. It might be the Atlanta Insurance Company. Pearce, I remember, and Morris Smith, I remember. Out of that group we had at least half the membership anyway.

Mr. McGee: I would like to strike the answer as not responsive.
The Court: Overrule the motion.
Mr. McGee: I would like to have an exception.

(Exception noted for the defendant by direction of the Court.)

Mr. McGee: In regard to a certain number of jurors, approximately twenty, named by the witness as having been secured from an unascertained club, I move you permit me to go into the jury box to determine the number.
The Court: Overrule your motion.
Mr. McGee: I would like to have an exception.

(Exception noted for the defendant by direction of the Court.)

Cross-examination.

By the Solicitor:

Q. Who is on the Jury Commission of Montgomery County?
A. The Jury Commission is composed of two circuit judges, the Judge of Probate, the Circuit Clerk and the Sheriff, Judge Jones being the Chairman, or President, and John Matthews being the Clerk.

48 Q. Section 21 of Title 30, which is qualifications of persons on the jury roll, reads: "That the names of all male citizens of the County who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment." Do you place every person, regardless of color, who fits those qualifications just the same as any other person?
A. We have tried to to the best of our knowledge, information and belief.
Q. And I will ask you this. Have you ever excluded any person who would otherwise have qualified because of color?
A. No, sir. Color has never been discussed, except somebody has said he is a negro, and he is a white man. I could make this statement in all honesty. I never remember one being turned down. I wasn't present at all the meetings. Any meeting I attended nobody ever turned down one somebody recommended as being qualified for jury service, somebody we could rely on.
Q. There is a negro on this present jury panel?

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A. Yes. He was on the panel before this case ever came up, on the regular panel. I don't know his name. He is there. He was on the regular jury panel before any special jury was drawn.

Q. Isn't it a matter of fact we have had negroes who have been drawn on the panels of both grand juries and petty juries fairly regularly?

A. During the years. I can mention Page. I don't know their names. And this comical negro on Monroe Street who has lot of freckles on his face. He has been on quite regularly. Those are the ones I remember well. Those have been on the jury time and time again. One of the first ones I knew was connected with the Atlanta Life Insurance Company, but I cannot remember his name. He was head of the Atlanta Life. He was on the jury about every eighteen months for a long time before any of this came up. I knew that firm. Mr. Tilley represented the company when I was practicing law. That is before I was judge. I might say these negroes, some of them and I were raised up together. Theodore Michaels lived near me as a boy, and Aaron Harris runs a club in Newtown. I remember those particularly because they were negroes raised with me and we played together as boys.

49 REDIRECT EXAMINATION.

By Mr. McGEE:

Q. A lot of times, particularly grand juries and other juries, when no colored jurors are on them?

A. Yes, sometimes there are no negroes' names drawn, and other times we have three or four at one time.

Mr. McGEE: I move to strike the answer as not responsive to the question.

The COURT: Objection overruled.

Mr. McGEE: I would like to have an exception.

(Exception noted for the defendant by direction of the court.)

By the COURT:

Q. Has the Jury Commission, or has it at any time during the time you have been a member, systematically and intentionally excluded any person or persons by reason of their color, their race or their creed?

Mr. McGEE: I object to the question on the ground the witness is not qualified to answer it.

The WITNESS: As far as I know, there never has been. I never have objected to any.

Mr. McGEE: May I have a ruling?

The COURT: I will sustain the objection to exclude the testimony.

Mr. McGEE: My contention is he can only state what he did himself when he was present.

The COURT: I qualify the question as to the time he was present as a member.

Mr. McGEE: He can only speak for himself when present; he cannot read the minds of the other people there.

The COURT: I take for granted he knew when he testified that he knew the rules. He says he did.

Any other question?

Mr. McGEE: No.

JOHN R. MATTHEWS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

50 By Mr. McGEE:

Q. Do you also choose names from club lists?

A. We get them from club lists, church rolls, and labor organizations, just anywhere where we can find a group of people who would qualify to go into the jury box.

Q. Do you ever secure club lists, lists from colored clubs?

A. No; I have not, because I don't know any colored clubs. I have asked different members of the negro race about names for the jury box. Peirce, in particular, about six months ago. He is a professor at the State Normal School. I asked him wouldn't he submit a list of names of good colored men to the Jury Commission for the purpose of placing those names in the jury box. I never did get a list.

Q. Have you had any response from them?

A. I asked D. Cathy for a list of colored people to put in the jury box.

Q. Do you know this man Cathy served time in the penitentiary?

A. Yes, sir, following which he has turned out to be a pretty responsible citizen of Montgomery.

Q. Has he ever been pardoned?

A. I don't know about that.

CROSS-EXAMINATION.

By the SOLICITOR:

Q. Have you talked to any other negroes about getting names for juries?

A. Yes, sir. I talked to a negro by the name of M. G. Bowen, who was an old postman—I think carried mail here in Montgomery

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for forty years—I asked him wouldn't he submit a list of colored people for the purpose of putting names in the jury box. I never heard from that.

Q. In other words, rather than excluding negroes systematically from the jury, your testimony is you made every effort you could to get names of qualified negroes?

A. That is right. I want to go a step further and say that I know there are a lot of good white people and good negroes whose names are not in the jury box. It is not because we have tried to leave them out, it is because we just don't know everybody. We have done the best we could to get them.

Q. Have you ever excluded any person from the jury simply
51 because of their color?

A. I never have. Never decided or discussed before the Jury Commission about them being discriminated against.

Q. In other words, your testimony is, if they are qualified for jury duty, their names are placed in the box regardless of color?

A. That is right.

Q. The color of a person has no influence on the minds of the Jury Commissioners?

A. Regardless of race and color. If they meet the qualifications of Title 30, Section 21, Code of 1940. We try to set that pattern.

REDIRECT EXAMINATION.

By Mr. McGEE:

Q. You have no figures as to the number of colored and whites in Montgomery County?

A. No. My acquaintance with colored people isn't as wide as it is with whites.

DEFENDANT RESTS

STATE'S EVIDENCE ON MOTION OF DEFENDANT TO QUASH THE INDICTMENT

WALTER B. JONES, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. You are presiding Circuit Judge of this Judicial Circuit?

A. I am.

Q. How long have you been Circuit Judge here?

A. I have been Circuit Judge for thirty-two years, and President of the Montgomery County Jury Commission since 1923, since it was organized.

Q. To your knowledge has there ever been any discrimination in securing names for the jury list as far as negroes are concerned?

A. None whatever in any meeting I attended, and I have attended most of the meetings.

Q. I will ask you whether there was any discussion generally whether a man is negro or white, or just confined to his name?

52 A. To be perfectly frank, I never heard that discussed whatever. All I go by the man's name. Unless I see the street and know it is a negro section, I don't know whether he is white or black, and never made any inquiry.

Q. Have you as a member of the Jury Commission made any effort to secure names of negroes in the past?

A. I have made countless efforts. Recently I made a speech to veterans taking G. I. training at the Washington Carver School on the duties of citizenship. At that time I went over the requirements for service on juries, and we would be glad to get the names of veterans or any other qualified persons that they could give to us. We did get two or three names. When the start of world war II cut down on the available men for jury duty, we had a public meeting in the court house attended by thirty or forty high-class negroes as sort of observers. I stated the purpose of the meeting, and also told all present the Jury Commission would like to have the names of qualified colored folks sent to them.

Q. You have exercised as much diligence to secure the names of qualified negro jurors as you have to secure the names of qualified white jurors?

A. I would say probably we have exercised more. The Board of Jury Commissioners of Montgomery County makes trips every year out in the County, and quite often we make trips around the city.

CROSS-EXAMINATION.

By Mr. McGEE:

Q. How many names are in the jury box?

A. I don't know positively. I would have to make a guess. I never have checked the jury roll.

Q. Didn't you make a statement when you were running for election the approximate number?

A. I don't recall if I did.

Q. Didn't you state in your opinion that the total would be in the neighborhood of five or six thousand?

A. I would say possibly five thousand. It would be near that.

Q. It is true at this time there are not as many colored jurors as there are white jurors in the box?

A. We called upon and made requests of the colored people. I have made every effort to get the names of colored people. I made that over a good many years as a member of the Commission.

53 Q. Have you any idea how many colored voters are in the box?

A. I have no idea.

Q. Have you any idea how many colored voters there are in the County?

A. I don't know. I never have checked the lists.

Q. Do the names put in the Jury Box have any designation whether colored or white?

A. No, sir. The only way to know that is to know the streets these colored people live on. If a man lives on Perry Street, I assume he is a white man. If he lives in Peacock Alley, or Dunbar, I would figure he is a colored man.

REDIRECT EXAMINATION.

By the SOLICITOR:

Q. You testified that the names which are drawn, those are names in the jury box?

A. Yes, sir.

Q. There is a card prepared after the name is placed on the jury list which shows the man's name and his occupation?

A. Business address and residence.

Q. Is anything on that card which would show his race?

A. No.

Q. Does the actual jury list itself indicate the color or anything

A. Doesn't even show white, black, Caucasian, Japanese, or race, creed, or anything mentioned on the jury roll about creed.

Q. When the Judge draws names out, unless he knows the man and knows the address, he wouldn't know whether he is drawing a colored man or a white man?

A. No way of knowing.

Q. Have you anything else to say?

A. When I went on the Bench in 1920 they had a Board of Jury Commissioners appointed by the Governor. 1923 introduced a new bill, and when Mr. Stakely was Senator in 1939 that bill became a local bill, and there has been no change except to change the Clerk's salary $100 to $1200. I have been continuously Chairman of the Board since that time.

J. E. PIERCE, having been duly sworn, was examined and testified as follows:

54 DIRECT EXAMINATION.

By the SOLICITOR:

Q. Your name is?
A. James E. Pierce.
Q. You are a member of the negro race?
A. Yes, sir.
Q. What is your occupation?
A. Schoolteacher.
Q. Where?
A. State College.
Q. In Montgomery?
A. Alabama State College, Political Science Teacher.
Q. Have you ever served on juries in Montgomery County?
A. I have.
Q. Do you know Mr. John Matthews, Clerk of the Circuit Court?
A. Yes, sir.
Q. Has he ever discussed with you or requested you to submit names of negroes for jury duty?
A. Yes, sir, he did.
Q. Could you tell us when that conversation took place?
A. The best of my knowledge it was June or July.
Q. And he asked you to submit, I believe, a list of names?

Mr. MCGEE: I object to the question on the ground it calls for hearsay.
The COURT: Overruled.
Mr. MCGEE: I ask for an exception.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. Did he, or did he not, ask you to submit a list of names for jury duty?
A. Yes, sir.

Mr. MCGEE: I move to exclude the answer on the ground of hearsay.
The COURT: Overrule the objection.
Mr. MCGEE: I would like to have an exception.

(Exception noted for the defendant by direction of the Court.)

55 CROSS-EXAMINATION.

By Mr. McGEE:

Q. At the time you served were there other colored people picked on the jury?
A. The last time there were three.
Q. How many times did you serve?
A. I have been called to jury service to my knowledge at least six times.
Q. In how many years?
A. Over a period of about eight or ten years.
Q. Have you been on the regular panel each time you served?

The Assistant SOLICITOR: We object to that. By regular panel do you mean the petty jury?
Mr. McGEE: Any panel.
The WITNESS: I have knowledge of being here maybe once for Grand Jury service, two of us. We were not used at that time.

By Mr. McGEE:

Q. Were there other colored on each occasion?
A. On one occasion I remember three.
Q. And one occasion two?
A. Yes, sir.
Q. On other occasions was anybody on the panel with you?
A. I don't remember the other times.

D. CAFFY, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. What is your name?
A. D. Caffy.
Q. What is your occupation?
A. I am in the real estate business.
Q. Where?
A. 110 North Court.
Q. That is in the City of Montgomery?
A. Yes, sir.
Q. How long have you lived in Montgomery?
A. All my life.
Q. You are a member of the negro race?
56 A. Yes, sir.
Q. Have you ever served on the jury in Montgomery County?

A. I don't know when, but I served.
Q. You don't know when?
A. No, sir. I have been called.
Q. Do you know Mr. John R. Matthews, Clerk of the Circuit Court?
A. Yes, sir.
Q. Has he ever talked to you in connection with securing names of qualified negroes for jury duty?
A. Yes, sir.
Q. Could you tell me on how many occasions Mr. Matthews has discussed that with you?
A. Twice.
Q. When?
A. I think about a month prior to the election when we discussed this the first time.
Q. Did he ever request you to submit names for jury service?

Mr. McGEE: I object on the ground that it calls for a hearsay answer.
The COURT: Objection overruled.
Mr. McGEE: I would like an exception.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. Did he ever request you to submit names?
A. Yes, sir.

Mr. McGEE: I object to the question and move to exclude the answer on the ground of hearsay.
The COURT: Objection overruled.
Mr. McGEE: I would like to note an exception.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. Has he ever asked you to give him names of members of the negro race who might qualify for service on the jury?

Mr. McGEE: That is objected to on the ground of hearsay.
The COURT: Objection overruled.
Mr. McGEE: I would like to have an exception noted.

(Exception noted for the defendant by direction of the Court.)

57 The WITNESS: Yes, sir, he did.
Mr. McGEE: I move to exclude the answer on the ground of hearsay.

The COURT: Objection overruled.
Mr. McGEE: I would like an exception.

(Exception noted for the defendant by direction of the Court.)

CROSS-EXAMINATION.

By Mr. McGEE:

Q. Weren't you convicted of receiving stolen property and sentenced to Kilby Penitentiary one time?
A. Yes, sir.
Q. Have you been pardoned?
A. Yes, sir.

Testimony closed on Defendant's motion to quash the venire.

RULING ON MOTION

The COURT: The Court is prepared to rule. The Court finds there is no evidence to sustain the allegations of the motion that negroes have been systematically excluded from the jury rolls, and the jury box or venires in this County. It is, therefore, considered, ordered and adjudged by the Court that the motion be, and the same is hereby overruled.
Mr. McGEE: I except.

(Exception noted for the defendant by direction of the Court.)

Mr. McGEE: There is another motion I want to file, and before I do that I would like to refile all the motions I filed with Judge Eugene Carter, and move to file them now, and in the order they were filed.
The COURT: All motions refiled with the exception of the motion concerning the exclusion of the press. The motions are overruled, and an exception granted the defendant.

(Exception noted for the defendant by direction of the Court.)

58 10:40 o'clock A. M.

WEST COURT ROOM

Parties present as before noted

The COURT: Let the record show the defendant's motion not to exclude the press is withdrawn.
Mr. McGEE: I have a motion to set aside the entire jury box on the ground the Jury Commission is composed under an Act which is unconstitutional and in violation of Section 105 of the State Con-

stitution. Section 105 of the State Constitution provides a general act in all cases, and the legislature isn't permitted to pass a local act providing for the same subject. It is my contention that this local act by which the Jury Commission was set up in 1939, at the time there was in effect a general act providing for that, therefore, the local act controverted the act of the legislature, and so forth.

The COURT: Motion overruled. Exception granted for the defendant.

(Exception noted for the defendant by direction of the Court.)

The COURT: Any further motions?
Mr. McGEE: Not at this time.
The SOLICITOR: I would like to have the State's witnesses called.

(State's witnesses called by the Clerk.)

The SOLICITOR: The State announces ready.
Mr. McGEE: Call the Defendant's witnesses.

(Defendant's witnesses called by the Clerk.)

Mr. McGEE: There are material witnesses for the defendant in this case missing who are vital to the defense of this defendant. Mrs. Katherine Trawick and Mrs. Pearl Barron are missing.

The COURT: What do you propose to prove by them? We will adjourn to the Jury Room.

Left Jury Room
Parties present as before noted

59 COLLOQUY

The COURT: I expect to have the hearing at this time. Mrs. Trawick and Miss Barron are not present. They are under subpoena to be here.

Mr. McGEE: These two witnesses are probably the most material of all. It is my understanding from information received and set out in the affidavit this defendant has been indicted six different times; also that the defendant confessed to each of six different crimes. The newspapers, of course, were on the street saying he confessed to all six of them. He has been indicted on six, and three cases were set for trial on the capital list, and came here to be tried on any of those indictments. And a confession where he says he did do these six different crimes. Your Honor knows if he confessed falsely or wrongly because of some duress, and if that confession isn't true, and if he confessed falsely under duress, I want the opportunity to disprove that confession. I have some pretty strong testimony out of these six women, four of them failed to identify the defendant. As a matter of fact, the defendant was

picked up last summer, held three days and subjected to the line-up, and during which time he wasn't identified by them.

The COURT: Have you talked to them?

Mr. McGEE: No; I have not. I just discovered it late and requested subpoenas for them.

The COURT: It will be up to you, Mr. Sheriff, to get them here.

Mr. McGEE: Actually the ones, I think, who didn't identify him are Mrs. Trawick and Miss Barron, and probably Mrs. Burson.

The COURT: You can make a showing of what they would testify to if you deem it necessary.

Mr. McGEE: Perhaps I better indicate to Your Honor as to why their presence is absolutely necessary, for this reason. The defendant was picked up this summer. Out of six indictments, five of them occurred before he was picked up. And while he was held five of these alleged crimes already had been committed, and he was subjected to the line-up and released by the police.

The COURT: He is on trial for only one offense.

Mr. McGEE: On the trial if they offer an alleged confession in which he says he committed six different offenses, I have been wondering whether the confession is going to be allowed to be introduced.

The SOLICITOR: Any confession that the State seeks to in-
60 troduce in this case will be limited to the offense in the Crowder case, and will not introduce anything other than the Crowder case. We do not intend to present any evidence whatsoever as to any attack, or any crime, or anything else, except in the case at issue. It is my opinion, legally speaking, we can only present a single case. We do not expect to bring in all of these cases, or offer any part of the confession not applying to the case on trial.

Mr. McGEE: Everybody in this County knows this defendant has been charged with six separate offenses, and the newspapers printed this story, but he had confessed to all six.

The COURT: I am going to overrule the motion for a continuance.

Mr. McGEE: Although the State may not introduce the written confession covering all of these cases. I think Mr. Thetford will agree I have a right to develop all the details that had to do with this confession, and detail all the conversations with the officers out in Kilby Prison. He certainly is going to have to bring out the entire conversations, everything that took place. He cannot restrict the witnesses. There is no way it can be kept out without going into full detail at the time the confession was obtained.

The COURT: Were the witnesses present at the time the confession was secured?

The SOLICITOR: No.

The COURT: I will overrule your motion and give you an exception.

(Exception noted for the defendant by direction of the Court.)

Mr. McGee: As to these other witnesses—Fannie Mitchell—she is missing.

The Court: What do you expect to show by her?

Mr. McGee: Well, she was going to be a witness to the fact, I have information she has known the boy for quite a number of years, that he is insane and not of sound mind. And John Galston would be called for the same purpose. And Amos Harvey would be called for the same purpose. And Reverend J. T. Thomas would be called for the same purpose, and also as to character.

The Court: Does the State have any objection to a showing of that kind?

61 The Assistant Solicitor: Have you talked to these people?

Mr. McGee: I have talked to them, and the parents have talked to them for me.

The Solicitor: I don't know that I am going to make a showing for any of these witnesses without the right to cross examine. Don't you have other witnesses who are going to testify to the same things?

Mr. McGee: Not the same facts. I think they will testify to other facts too.

The Solicitor: I don't know why the State should make a showing without the right to have cross examination.

Mr. McGee: I am making a motion to continue the case until tomorrow or Monday to get the witnesses down here.

The Court: I deny the motion, and give you an attachment for those witnesses.

Mr. McGee: I move the Court be continued to allow me to obtain some witnesses who could not be here.

The Court: You can make a showing for them if you have talked to them. The State refuses to agree to a continuance, attachments will issue for the witnesses, and I overrule the motion.

The case will proceed to trial.

West Court Room

10:56 o'clock A. M.

Present: Parties as before noted

The Court: Any further motions?

Mr. McGee: I would like to have certain questions propounded to the prospective jurors.

The following questions were submitted to the Court in writing by the defendant:

"1. Have any of the jurors ever had a close relative or friend raped by a member of the negro race?"

"2. Have you ever had any close friend or relative raped by anyone?"

62 11:01 o'clock A. M.

All jurors sworn generally by the Clerk

The COURT: Have any jurors in the court room any valid excuse they want to submit at this time why they should not serve? This is an important case so please don't ask to be excused unless you have a valid excuse.

The following jurors were excused by the Court:

No. 33 Cline B. Pruitt
No. 56 William E. Chalkley
No. 5 Cecil C. Boyd.

The COURT: We are about to try the case of The State of Alabama vs. Jeremiah Reeves, Junior, charged with the capital offense of rape, and if you don't have a valid excuse, the Court will require that you remain.

The following jurors were excused, with consent of the defendant:

No. 33 Cline B. Pruitt
No. 56 William E. Chalkley
No. 5 Cecil C. Boyd.

The COURT: We are about to try the case of The State of Alabama vs. Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and been citizens for the past year?

Are each of you resident householders or freeholders of this County?

Have each of you any fixed opinion as to the guilt or innocence of the defendant that would bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

CULVER R. BROACH: I don't think I would make a good juror. I am personally acquainted with one of the victims, and I am hardly the right person to serve.

The COURT: Have you a fixed opinion as to the guilt or innocence of this defendant?

CULVER R. BROACH: What the papers comment—I have.

63 The COURT: Any objection to discharging this juror?

The SOLICITOR: No.

Mr. McGEE: No.

The COURT: The juror is excused with the consent of the defendant.

Are you willing to convict on circumstantial evidence if that evidence convinces you beyond a reasonable doubt?

These two requests are made by the defendant's counsel:

Have you ever had a close relative or friend raped by a member of the negro race?

Have you ever had any close friend or relative raped by anyone?

(The foregoing questions were propounded by the Court to each of the regular and special jurors present.)

The following jurors were excused for cause with consent of counsel for defendant:

No. 49 Alex D. Trum
No. 59 Lewis P. Goodwin
No. 66 Joseph D. Jolley
No. 72 Al Myers.

The selection of the Jury was made in the left jury room, there being present:

The COURT.
The SOLICITOR and ASSISTANT SOLICITOR.
The CLERK.
The defendant and his counsel.

WEST COURT ROOM.

12:04 o'clock P. M.

Present:

Parties as before noted.

Jury sworn.

12:06 o'clock P. M.

Witnesses for the State and defendant sworn.

Counsel for defendant requested the rule. State's witnesses placed in right jury room; defendant's witnesses in left jury
64 room.

The COURT: The Court makes the following order:

By virtue of the provisions of the Constitution of Alabama and laws of Alabama, and discretion vested in me as to the exclusion of persons from the hearing of this case, it is the order of this Court that all parties are excluded from the court room during the trial of this case, except the jurors trying the case, the officials of the Court, including the law enforcement officers, members of the Bar, and members of the press, and the relatives of the accused. All other persons must leave the court room, and no other person will be allowed to enter at any time during the trial of this case.

BLEED THROUGH POOR COPY

Motion of the defendant to allow the public to remain overruled, and an exception granted the defendant.

(Exception noted for the defendant by direction of the Court.)

Motion presented by defendant to exclude the public only while the prosecutrix testifies is overruled, and an exception granted the defendant.

(Exception noted for the defendant by direction of the Court.)

Mr. McGee: I move that all persons be excluded except the jury, the defendant's counsel and officials of the Court, otherwise it would not be within the discretion of the Court for part of the public to remain and others not.

The Court: The Court is still of the opinion the Court can remove those indicated and so rules. Let the record show Mr. McGee is now taking a different position in that matter.

Mr. McGee: I ask for an exception.

The Court: Exception granted.

(Exception noted for the defendant by direction of the
65 Court.)

The Court: What about your motion to have a stenographer assist you? You may have one if you like.

Mr. McGee: I will not press that. I cannot locate him now.

66 (Defendant's Motion for a Continuance marked "Defendant's Exhibit 1, 11/28/1952, WHL.")

(Defendant's Motion to Quash the Venire marked "Defendant's Exhibit 2, 11/28/1952, WHL.")

(Affidavit of defendant marked "Defendant's Exhibit 3, 11/28/-1952, WHL.")

(Defendant's Motion for a Mistrial marked "Defendant's Exhibit 4, 11/28/1952, WHL.")

(Defendant's Motion to permit the public to remain during the trial marked "Defendant's Exhibit 5, 11/28/1952, WHL.")

(Defendant's Motion to exclude the public from the trial while the prosecutrix testifies marked "Defendant's Exhibit 6, 11/28/-1952, WHL.")

(Defendant's Motion to permit relatives of defendant to remain during the trial marked "Defendant's Exhibit 7, 11/28/1952, WHL.")

(Defendant's motion to set aside the entire jury box marked "Defendant's Exhibit 8, 11/28/1952, WHL.")

(Defendant's Motion for a continuance because of absence of material witnesses marked "Defendant's Exhibit 9, 11/28/1952, WHL.")

67-68 (Defendant's motion for instanter subpoenas marked "Defendant's Exhibit 10, 11/28/1952, WHL.")

DEFENDANT'S EXHIBIT 1

In the Circuit Court of Montgomery County Criminal Term

Case No. —

THE STATE

vs.

JEREMIAH REEVES, JR.

Comes the Defendant in the above styled cause and moves the court to continue the trial of this cause upon the following grounds:

1. Defendant was indicted on six (6) separate cases by the Grand Jury of Montgomery County and three (3) of these cases, capital cases, were set for today, November 26th, 1952. Said three (3) capital indictments were rendered on November 14th, 1952. Defendant was arraigned on November 14th and forced to plead to said three (3) capital indictments and said indictments were not served on the Defendant until November 17th, 1952. Furthermore Defendant was not informed as to which of the three capital cases would be tried on the 26th and thus neither he nor his counsel has had time to prepare the Defendant's defense in three (3) different capital cases.

2. Defendant or counsel, due to the enormity of the three (3) capital charges, have had insufficient time in which to prepare an adequate defense.

3. Going to trial under conditions set out in grounds one and two will be a violation of the Defendant's constitutional rights as guaranteed by the 14th amendment under the Constitution of the United States.

4. Defendant was indicted on three different capital charges, all three of which were set for the same day, and the defendant was served a copy of the venire in only one case and that was a charge of robbery, a copy of which venire list is attached to this motion. He was not informed until the day of the trial that he would be tried on a rape charge and he has as yet not received a list of the venire or had served on him a list of the venire in the case which is not being tried.

(S.) JOHN N. MCGEE, JR.,
Attorney for Defendant.

69 DEFENDANT'S EXHIBIT 2—Omitted. Printed Side page 36 Ante

70-72 DEFENDANT'S EXHIBIT 3—Omitted. Printed Side Page 23 Ante

73 DEFENDANT'S EXHIBIT 5—Omitted. Printed Side Page 25 Ante

DEFENDANT'S EXHIBIT 6—Omitted. Printed Side Page 25 Ante

DEFENDANT'S EXHIBIT 7—Omitted. Printed Side Page 25 Ante

74-75 DEFENDANT'S EXHIBIT 8

In the Circuit Court of Montgomery County, Alabama, Criminal Term

Case No. —

STATE OF ALABAMA

vs.

JEREMIAH REEVES, JUNIOR

Comes the defendant in the above cause and moves the court to set aside the entire Jury box on the following grounds:

1. The Jury Commission as presently composed is unconstitutional and illegal, and as set violates the constitution of the State of Alabama and that of the United States.
2. The method used by the Jury Commission in selecting jurors violates the fourteenth amendment to the Constitution of the United States and violates the Constitution of Alabama.
3. The jury box was illegally filled by a group of men set up as jury commissioners under an act of the legislature that is in violation of Section 105 of the Constitution of the State of Alabama which prohibits the passage of a local act in any case which is provided for by a general law.
4. The jury box is illegally filled by a group of men acting without legal and constitutional authority.
5. The jury commission of Montgomery as set up under a local act is illegal as said local act is unconstitutional and in violation of section 105 of the Constitution of the Sovereign State of Alabama.

——— ———,

Attorney for Defendant.

76-77 12:27 O'clock P. M.

Adjourned Until 2 O'clock P. M.
2 O'clock P. M.

West Court Room

Present:

The COURT.
The JURY.
The SOLICITOR, and ASSISTANT SOLICITOR.
The defendant and his counsel.

EVIDENCE ON BEHALF OF THE STATE

MABEL ANN CROWDER, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. Will you state your name to the jury, please?
A. My name is Mabel Ann Crowder.
Q. Where do you live?
A. At the present time I live at 124 North Capitol Parkway.
Q. Where were you living on July 28th of this year?
A. I was living at that time at 3852 Cleveland Avenue.
78 Q. You say he had a hat. What kind of hat was it?
A. A straw hat.
Q. Do you remember how he was dressed?
A. He had on light blue trousers, a dark shirt with yellow designs on it—either blue or black; I think blue—maybe it was a blue shirt —with yellow-gold designs.
Q. After this rape where did you go?
A. I went to my next door neighbor's house, Mrs. Struchko.
79 Q. What did she do for you?
A. I told her—

Mr. MCGEE: I object.

By the SOLICITOR:

Q. Don't tell what you told her. Just what did she do?
A. She notified the police and my husband. She washed the bruises on my head and gave me codeine tablets, I believe one quarter grain codeine, and ammonia and water, spirits of ammonia and water.

Q. Where did you go after that, or where were you taken after that?

A. After the policemen and detectives and all came to talk with me I was taken to Maxwell Air Force base hospital.

Q. How long were you out there?

A. Four days.

Q. Who treated you out there, what doctors saw you there?

A. Colonel Kojak and Major Zarling.

Q. Are you still under treatment out there?

A. Yes; I am.

Q. For what?

A. Head injury.

Q. Do you remember how many times he hit your head on the floor?

A. I remember thirteen times my head hit the floor. After that I don't know whether it hit more times, or not.

Q. That is when he had you by the hair?

A. Yes, sir. He had me by the hair and was beating my head against the floor.

Q. Do you remember any conversation, anything that he said there at the time of the rape or immediately afterwards?

A. He said once—

Mr. McGee: I object. It is irrelevant to the facts in issue.

The Court: I think the witness has a right to testify to any statement the accused made in her presence, if he made any.

Mr. McGee: I would like an exception.

The Court: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By the Court:

Q. You may go ahead and answer the question.

A. Once he said, "I ought to kill you." And that is all I remember him saying, other than what I said.

80 By the Solicitor:

Q. Other than what you have already said?

A. Yes.

Q. I believe you testified this happened on July 28th?

A. Yes, sir.

Q. Of 1952?

A. Yes.

Q. The place that this happened is in Montgomery County?

A. Yes.

Q. The City and County of Montgomery?

A. Yes.

Q. When was the next time you saw this defendant?
A. It was just a few days ago when I was taken down to Police Headquarters to identify him.
Q. You hadn't seen him at any time after that except when you saw him at Police Headquarters?
A. No.

Mr. McGee: I object to that as a self-serving answer. I object to it on the ground it calls for a self-serving answer.
The Court: Overrule the objection.
Mr. McGee: I would like an exception.
The Court: Exception granted.

(Exception noted for the defendant by direction of the Court.)

Mr. McGee: I would like to move to have the answer excluded on the ground it was given before my objection.
The Court: The motion is overruled.
Mr. McGee: Grant me an exception.
The Court: Exception granted.

(Exception noted for the defendant by direction of the Court.)

By the Solicitor:

Q. Where was he at Police Headquarters when you saw him?
A. He was in a room on the right side of the building down where the detectives' offices are, and I saw him through the glass.
Q. Did you, or did you not, then make a positive identification at that time?

81 Mr. McGee: I object to anything not in the presence of the defendant, and on the ground it is hearsay.
The Court: She has a right to say whether she recognized him or not. Overrule the objection.
Mr. McGee: I would like to have an exception.
The Court: Exception given the defendant.

(Exception noted for the defendant by direction of the Court.)

By the Solicitor:

Q. Will you answer the question.
A. I did.

Mr. McGee: I move to exclude the answer on the ground of hearsay.
The Court: Objection overruled.
Mr. McGee: I would like an exception.
The Court: Exception granted the defendant.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. Subsequently did you talk to this defendant?

A. I don't understand the question. What do you mean by subsequently?

Q. Right afterwards.

A. Yes; I did.

Q. Where did you talk to him?

A. In one of the rooms there at Police Headquarters, the detectives' office.

Q. Do you know who else was present at that time?

A. I can name a few of the men who were present. And the ladies with me, I didn't know everyone.

Q. Will you name those you know who were there?

A. Miss Pearl Barron, and Miss Sullivan and I were the only ladies present in the room. Lt. Miller was in there. I don't know the names of the policemen there. There were other men present.

Q. Did you coerce or threaten this defendant, or offer him any promise or hope of reward?

A. No; I did not.

Q. Did anyone in your presence and hearing threaten this defendant, or coerce him, or offer him anything, or any promise of reward?

82 A. No, sir.

Q. Will you tell the Jury—

MR. MCGEE: I object.

THE COURT: I haven't heard the question yet.

By the SOLICITOR:

Q. Will you tell the jury what conversation, if any, you had with this defendant at that time?

A. Yes, sir.

MR. MCGEE: At this time I would like to interpose an objection if this testimony about to be given is something in the nature of a confession. I would like to file a motion to exclude it until we know the nature of it in the absence of the Jury as to whether or not such a confession would be admissible.

THE COURT: You have a motion?

MR. MCGEE: Yes, sir.

THE COURT: The Court will allow you to state your motion verbally to save time.

MR. MCGEE: I have one in writing. If the Court please, I will go ahead and dictate it into the record.

The defendant moves the Court to grant him a hearing in the absence of the Jury as to whether or not the confession, or any

alleged confession, made by him is admissible upon the following grounds:

1. Certain statements and admissions were extracted from the defendant by the officers of the State of Alabama while the defendant was being held incommunicado at Kilby Penitentiary and said statements were extracted only after continual questioning for periods of hours, and after threats and abuse.

2. Upon the further ground that part of the time while the defendant was being questioned, he was questioned in the room with the electric chair, and was offered the hope and promise by such officers that if he would confess he would thus save his life and keep out of the chair.

The COURT: I understand this particular conversation the State is asking about is a conversation that took place at City Hall?

The SOLICITOR: That is correct.

The COURT: Is it in the nature of a confession?

The SOLICITOR: It is in the nature of a confession, and
83 also is in the nature of an admission against interest—both.

The COURT: All right. The Court will conduct a preliminary investigation limited to anything that may have happened preliminarily to this conversation.

We ask that the Jury be taken out. You are not to talk about this case, or even discuss it among yourselves. The matter raised is a matter of law that I shall hear first as a preliminary matter to determine whether you should hear the evidence at all.

(The Jury retired to the Jury Room in charge of the bailiff.)

The COURT: Let the record show a preliminary hearing as to the admissibility of the statement made is had before the Court out of the presence of the Jury, at the request of the defendant.

I will let the defendant cross-examine the prosecutrix all that happened in the presence of the defendant, anything that took place in her presence. You may examine her now as to what happened. That will not interfere with your right to cross-examine her later on any evidence she has already given.

By Mr. McGEE:

Q. Do you remember what date you went down to Police Headquarters?

A. Which time?

Q. The time we are talking about you talked to the defendant.

A. It was on Monday—Wednesday—the 10th, I believe.

The SOLICITOR: Wednesday would be the 12th.

By the COURT:

Q. The day after Armistice Day?
A. Yes. I don't know. I know it was Wednesday. I am pretty sure it was the 12th.

By Mr. McGEE:

Q. What time Wednesday, do you remember?
A. I think I went down in the morning, at 11 o'clock, I believe.
Q. And, of course, he was in custody at the time you talked to him? There were police officers present, I mean.
A. Yes.
Q. You didn't know what had taken place before you got there?
A. No; I didn't.
Q. Did the police say anything to him while you were there before you started talking to him?
84 A. I believe Miller asked him when we first walked in the room, Miller asked him did he recognize any of us, and that is all that was said. Someone said when he hesitated to answer the question, he said, "that is all right, go on and talk."
Q. Did you start the conversation with him?
A. After he answered Captain Miller,—let me think just a moment—no; I wasn't the first of the women to speak to him.
Q. When that conversation between you and him took place, were you the first to speak, or did he speak first?
A. I spoke first.
Q. What did you say?
A. I went in for one purpose, to ask him why he done it, and I asked him that question.

The SOLICITOR: I don't believe it is proper to go into what she said.
The COURT: No. The statement was limited to whether any statement he made was made voluntarily.

By the COURT:

Q. Did anybody at that time threaten him or offer him anything if he was to testify?
A. No, sir.

By Mr. McGEE:

Q. You don't recall all who were present there?
A. No; I don't know all the gentlemen present.
Q. You don't know whether they made any threats shortly before you came in there?
A. I know nothing that went on before I went into the room.

Q. As far as that goes, you don't know what went on then from the time he was picked up, do you?

A. No, sir; I don't.

Q. Did the police tell you he had confessed?

A. No. The Solicitor came into the room and didn't tell me anything, but handed me a typewritten confession.

Q. He handed you a typewritten confession when you first got to Headquarters?

A. Yes, sir. But the confession wasn't signed.

Q. It had his name on it?

A. Yes, sir.

85 Q. Did they tell you at the time you were taken in this room——

A. Which time in which room?

Q. The room thay had taken you to.

A. They had told me that previously when they called me to come down there.

By the COURT:

Q. At the time you were there, did you see any evidence of him being put in fear, or anybody threaten him, or anything of that kind?

A. Absolutely not.

The COURT: The Court rules this statement voluntary, she is qualified to testify to any conversation that took place at that time. The Court rules preliminarily any statement made was voluntarily given, and the credibility of it will be given to the Jury.

Mr. MCGEE: May I introduce evidence in rebuttal? I now call the defendant to show the reasons why he made a statement to her. I am going to show the real reasons as I develop these facts.

The COURT: If you have evidence as to this particular statement, I will let it go in. The Court rules as a matter of law on this evidence, unless you have anything to rebut it, the State made a showing that this statement was voluntarily given.

Mr. MCGEE: I have evidence at the time he was arrested he was held incommunicado and wasn't able to see anybody until Wednesday afternoon.

The COURT: The only issue I have before me at this time is whether this statement was voluntarily given.

Mr. MCGEE: I would like to make an offer to show at the time of this conversation the defendant had been held since the 10th, about two o'clock on the afternoon of the 10th, up until this conversation, incommunicado, and was denied permission to talk or to phone to anyone, to any of his relatives and friends, friends and relatives hadn't been allowed to see him or to hold a conversation, and up to the time he was carried down to Police Headquarters the defendant was held in the State Penitentiary at Kilby.

And further, the defendant is a seventeen year old negro boy, seventeen in August of 1952, and that he quit school while in the 8th grade. That is the offer I would like to make. May I show that?

86 The COURT: Having stated for the record what you intend to show, and nothing being applicable to this particular occasion, the offer is denied and the statement will be admitted.

Mr. McGEE: I would like to have an exception.

The COURT: You may have an exception.

(Exception noted for the defendant by direction of the Court.)

(At 2:30 o'clock P. M. the Jury returned to the Courtroom.)

The COURT: The State may proceed with the examination of this witness.

By the SOLICITOR:

Q. I am going to ask you the question over again. The question I asked was this. Did he make any statement to you down at Police Headquarters on the 12th, Wednesday, the 12th of November? Did you have a conversation with him?

A. Yes, sir; I did.

Q. I would like you to tell the Jury what conversation you had with him, who asked the first question, what the reply was, as best you remember.

A. I asked the first question.

Q. What was the question, what did you ask him?

A. "Why did you do it?" And to that he just shook his head, and later he said, "I don't know."

Q. Did he deny he raped you?

A. No, he did not.

Q. Did he recognize you?

A. Yes.

Mr. McGEE: I object.

By the SOLICITOR:

Q. Let me put it this way. Did he say anything that would show he recognized you?

A. Yes, he did.

Q. What did he say?

A. He was asked which house was I in—"where do you remember her from?" And he told them, "Cleveland Avenue, the first one."

Q. "Cleveland Avenue, the first one"?

A. Yes.

Q. He said that to you at that time?

87 A. He was speaking to someone else, but I was in the room.

Q. Did you have any other conversation with him yourself?

A. Yes. I asked him by which door he entered the house, and he said he entered by the back door.

Q. I want you to look at this defendant. Now, do you positively identify him as the man who raped you?

A. Yes.

Q. I will ask you this. Have you any mental reservation whatsoever?

A. No.

Mr. McGee: I object, and move to exclude the answer on the ground it is self-serving and prejudicial.

The Court: Sustain the objection to the last question and allow it to be stricken.

By the Solicitor:

Q. I would like for you to go back to the actual rape itself. When he came to the door of the room you testified you were sitting down. Did you get up?

A. Yes, sir.

Mr. McGee: I object to the question on the ground it is predicated on a question assuming a fact in issue.

The Court: Assuming what fact in issue?

Mr. McGee: Assuming the fact he raped her.

The Court: She has already testified he did. Objection overruled. You would have the right to cross-examine her. Previously she testified he did without any objection.

Mr. McGee: I would like to have an exception.

The Court: You may have an exception.

(Exception noted for the defendant by direction of the Court.)

By the Solicitor:

Q. Did you get up?

A. Yes; I got up. I was sitting in the room in a rocking-chair, and when I looked in the mirror and saw him I got up and turned around, and that is when I said, "get out of here."

Mr. McGee: I move to exclude the answer on the ground it is not responsive to the question and has nothing to do with what he asked her.

The Court: Overrule the objection.

88 Mr. McGee: I would like an exception.

The Court: You may have an exception.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. When did he first put his hands on you?

A. When he first came across the room after I had told him to get out. Then he put his hands on my throat.

Q. On your throat?

A. Yes, sir.

Q. With both hands on your throat?

A. Yes. And he took both hands this way, and then he moved and had one hand down here this way, and was holding my arms because I was struggling.

Q. He did hold your arms?

A. Yes.

Q. When did he force you back on the bed?

A. After he had made me take my panties off, then he forced me across the side of the bed. It wasn't the center of the bed, more or less across the foot of the bed.

Q. At that time was he still holding your hands?

A. He had one hand on my throat, and was holding my right arm, holding me by the arm.

Q. On which hand did you have the broken fingernails?

A. On my right hand.

Q. Did you at any time ever hit at him?

A. Yes. If I struck him, I wasn't conscious of actually striking him.

Q. Did he hold your hands during the whole time as long as he was on the bed?

A. He tore loose of me with one arm and took his pants, unzipped his pants, or unbuttoned them, whatever it was—I don't know which it was—then he grabbed my hand again because I was trying to fight him off, but I couldn't.

Q. How much do you weigh?

A. I weigh between 96 and 100 pounds.

Q. When you talked to the police did you give them a description of the defendant?

A. Yes.

89 Q. Did you tell them how he was dressed?

A. Yes.

Q. Had you ever seen this defendant before?

A. Not to my knowledge.

Q. Not to your knowledge before July 28th?

A. No, sir.

CROSS-EXAMINATION.

By Mr. McGEE:

Q. Do you remember what kind of a day that was, whether it was clear, bright, cloudy or what?

A. Well, it wasn't raining. I would say it was clear, bright day.

Q. The sun was shining.

A. The sun was shining later when I went to the hospital. I don't know whether it was shining at the particular moment he was at the house, or not.

Q. You say you had a number of head injuries from the scuffle and are still under treatment for head injuries at Maxwell Field?

A. Yes, sir.

Q. You mentioned a Colonel and Major in the Medical Base.

A. Yes, sir.

Q. Approximately how many times was your head struck?

A. Thirteen times to my knowledge my head hit the floor.

Q. Were you knocked unconscious?

A. I passed out.

Q. How long altogether was this man who was in your room, was he in there?

A. I don't know how long he stayed after I passed out.

Q. Approximately what time was it when you went over to the neighbor's?

A. She called the police about a minute after I got there, I suppose.

Q. What time was it?

A. 12:40 when she called.

Q. It was about 12:15 when you first saw this man; is that right?

A. Yes.

Q. Is that correct?

A. Approximately 12:15.

Q. Did he have on a coat?

A. No.

90 Q. About how tall was he?

A. I don't know exactly. I judge he was only about 5.9 and one-half or 10.

Q. How much did he weigh?

A. I was no judge of that.

Q. No judge of it?

A. No. I said between one hundred and thirty and one hundred and fifty.

Q. He didn't have any coat or anything, just a shirt.

A. Just a shirt.

Q. When did the police first come to you after the 10th? Did you read about this boy being picked up on the 10th?

A. I heard in the newspaper a woman had been attacked.

Q. Did the police come to see you as soon as they picked him up?

A. No.

Q. When did the police contact you after he was picked up?

A. They contacted me that evening, they called me and told me I might have to go out to Kilby to look at him. And then they called me later and said they would be around for the next afternoon out at Kilby.

Q. So they called you up the same night and told you?

A. Yes, sir.

Q. To be the next afternoon at Kilby?

A. Yes.

Q. Did you go to Kilby the next afternoon?

A. No. They changed their plans.

Q. Did they talk to you again after that?

A. Yes.

Q. When did they next call you? Did they come out to see you on Tuesday?

A. They didn't come out to see me. I cannot remember whether they called me, or not, I had so many telephone calls during those few days.

Q. They did contact you again after Monday night?

A. Yes.

Q. When was that?

A. I just answered that question. I said I didn't know.

Q. Was it on Friday?

A. It couldn't have been on Friday because I identified the boy on Wednesday.

91 Q. I want to get the date to the best of your recollection.

A. They probably called me on Tuesday to let me know I were to go downtown Wednesday.

Q. What time of day did they call you, morning or afternoon?

A. I don't remember.

Q. Did anyone come out there to see you?

A. No, not until the policemen came to take me down.

Q. When did the policemen came out there?

A. Wednesday before 11 o'clock.

Q. Wednesday morning?

A. Yes, sir.

Q. Do you know what policeman it was?

A. I believe he was a detective. I think he was new on the force.

Q. You don't remember his name?

A. No.

Q. Was he by himself?

A. He was by himself. Horton, or Hogan, something like that. I don't know the name.

Q. Did he have any conversation with you when he saw you out there?

A. Just the usual "how are you, nice day, isn't it?"

Q. Did he get out of the car and come in the house?

A. He got out of the car and came up to the door, and I asked him to wait a minute until I wrote my husband a note.

Q. Did he tell you what he wanted with you?

A. They called me from Police Headquarters that morning and told me they would send out and pick me up.

Q. He told you he was ordered to pick you up, I suppose.

A. Yes, sir.

Q. Told you you were going down to look at this man?

A. He didn't mention why. He said they told him to come out and pick me up.

Q. Did they tell you that morning they wanted you to come down and look at this negro?

A. Yes, sir.

Q. Had you heard about a confession before that?

A. No; I hadn't.

Q. When did the confession come up? You say after you got to Headquarters the Solicitor said that he had confessed.

A. The Solicitor said he had confessed when I walked in there.

92 Q. That is before you saw the boy; is that correct?

A. Yes, sir.

Q. Do you know how many pictures they made altogether of this boy?

A. Made of him?

Q. Yes.

A. I don't know anything about that. I never saw a picture of him.

Q. Did you read the paper on Tuesday?

A. I probably did. I don't know which article you are referring to.

Q. The article in the paper they wrote about him and carried his picture.

A. That wasn't until after I had identified him, was it?

Q. Do you remember the article which you read and had his picture in the newspaper?

A. I remember the article, but I don't remember which paper it was printed in.

Q. You saw his picture in the paper?

A. I saw the picture, yes.

Q. The police officers, didn't they tell you they had the nigger that raped you?

A. No, they didn't. They said they had a negro for me to look at.

Q. The solicitor showed you a typed confession with this negro's name on it before you ever looked at this colored boy?

A. I looked at him through the window.

Q. Before you ever looked at the negro boy?

A. Yes, sir.

Q. They told you to look through the glass window?

A. That is correct.

Q. He was the only negro in there, was he not?

A. That is correct.

Q. In your original complaint how old did you tell the police that man was you saw?

A. I said seventeen to twenty-five.

Q. Did you say he was about six feet tall?

A. I said he was taller than my husband. I didn't know.

Q. You said he was taller than your husband. How tall is your husband?

A. Five feet nine.

Q. Did you tell them he was a pretty heavy set man?

A. No; I did not.

93 Q. Did you tell them he had a mustache?

A. He didn't have a mustache.

Q. Did you tell the police he has a mustache?

A. No; I did not.

Q. Did the police show you the pictures they took of him?

A. I never saw a picture of him until the one in the paper.

Q. Did the police show you any pictures of him at all?

A. Not of this particular boy, no.

Q. Were you pretty excited that morning when you went to see that man? I imagine you were, weren't you?

A. Yes, sir; I was.

Q. You were pretty frightened or scared?

A. Which morning do you mean, back in July?

Q. The morning you were raped by this man in your room.

A. Yes, sir, I was scared.

Q. About how long did you look at this boy before he jumped on you, just a second?

A. Oh, possibly five or six seconds.

Q. You turned around and saw him, and screamed, and said, "get out," and he jumped you; is that correct?

A. Yes.

Q. He held your throat with one hand and the right arm with the other hand?

A. Yes.

Q. You told us before, you said he had intercourse with you. Before he had intercourse with you, you struck at him one time, but didn't hit him?

A. I cannot say how many times I struck at him.

Q. On direct examination here you say you hit at him once and missed him; is that right?

A. I said I know of once I hit at him and missed him. I know I hit at him more than once.

Q. Which hand did you have the broken fingernails on?

A. The broken fingernails were on my right hand.

Q. He was holding your right hand?

A. Yes, sir.

Q. And held your neck all the time?

A. Yes.

Q. With his right hand?

94 A. No. He was holding my neck most of the time.

Q. Did you scratch at him with your left hand?

A. Yes.

Q. Did you scratch him?

A. I hit at him. I wasn't conscious of ever striking him.

Q. He wasn't doing any talking at this time, was he?

A. No.

Q. The only conversation he had with you was after it was over; is that correct?

A. That's correct.

Q. After it was over was when this man said he would kill you if you reported it?

A. That is right.

Q. Before this happened he didn't make any threats to kill or say a word; is that correct?

A. That is correct.

Q. You say he was holding you by the neck with his right hand and was holding your right arm, and he made you take your pants off?

A. Yes.

Q. You took them off yourself; is that correct?

A. Yes.

Q. And all this time never said a word to you?

A. I didn't say that.

Q. Until after the intercourse, I believe you said.

A. He had told me to quit screaming.

Q. And that is all he said, "quit screaming?"

A. And "shut up," yes.

Q. I believe this was July 28th, and the next time you ever looked at a nigger you thought might have attacked you was on November the 12th, is that correct?

A. No. I had looked at two.

Q. You had looked at two negroes before that?

A. Yes, sir.

Q. On no other niggers had the Solicitor given you a typed confession?

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A. No.

Q. Before you looked at them?

A. No. I was shown pictures of them.

Q. They was in a line-up of niggers is that right?

95 A. Yes, sir.

Q. Had some other niggers in the line; is that correct?

A. Yes.

Q. How many different line-ups did you look at?

A. I have no idea. Quite a few.

Q. Are you acquainted with Mrs. Burson now?

A. No.

Q. Was there any other women in there with you at the time you talked to him?

A. Yes.

Q. Did they say anything to him?

A. Yes.

Q. Do you know Mrs. Kathrine Trawick?

A. I think I met her.

Q. Was she down there?

A. I don't know where she was. There was quite a few women down there I never met before.

Q. About how long did you stay with him at that time, on Wednesday?

A. Several minutes.

RE-DIRECT EXAMINATION.

By the SOLICITOR:

Q. You said you did scream?

Mr. McGEE: Object to the question as leading.

The COURT: I will sustain the objection on that ground.

By the SOLICITOR:

Q. Did you, or did you not, scream at that time?

A. I did.

Q. Do you remember how many times you screamed?

Mr. McGEE: I object. This is not re-direct.

The COURT: You didn't object before. You may ask it one time.

By the SOLICITOR:

Q. Do you remember how many times you screamed?

A. No.

Q. In your best judgment, was it more than once?

Mr. McGee: I object to the question because the witness has shown herself disqualified to answer it by the previous answer.

96 The Court: She testified she doesn't remember how many times, so I will sustain this objection.

Lois Struchko, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. Will you tell us your name, please.
A. Lois Struchko.
Q. Where were you living on August 28th of this year?
A. At 3846 Cleveland.
Q. Do you know Mrs. Ann Crowder?
A. Yes, sir; I do.
Q. Where was your house in relation to her house?
A. Right next door.
Q. Did you see her on that day?
A. Not before she came to my front door.
Q. She came to your front door?
A. Yes, sir.
Q. Approximately what time was this?
A. It was 12:40.
Q. Will you describe her condition to the Jury at the time she came to your door?
A. Well, she was in a terrific state of shock, hysteria, crying, and she was badly bruised and bleeding, and she was so nervous that she just couldn't hardly talk until I brought her in the house and made her sit down, and I found out what was wrong with her and I called the police.
Q. Did she complain to you she had been raped?
A. This is the way she told me—she had been beaten and raped by a nigger.
Q. Did you give her anything?
A. Yes, sir; I did.
Q. Tell the Jury what you gave her.
A. I gave her a few drops of spirits of ammonia and water to calm her nerves down. And she complained of her head hurting. She had lacerations on her head, and then I gave her a codeine tablet, and then put cold compresses on her head. That is all.

97 Q. Did you say she was bleeding?
A. Yes, sir, she was. Her head was bleeding on the right side.
Q. How was she dressed when she came over there?

A. She had on brown loafers, a white housecoat with flowers in it, her bras, her panties and garter belt.
Q. Do you know where she went from your house?
A. I took her to the hospital.
Q. What hospital did you take her to?
A. Maxwell Air Force Base.

CROSS-EXAMINATION.

By Mr. McGee:

Q. You say this is on August the 28th?
A. Yes, sir.
Q. August 28th of 1952, this year?
A. That is correct.
Q. What day was it?
A. On a Monday.
Q. About what time was it she knocked at your door?
A. I would say approximately 12:40.
Q. Was your door opened at that time?
A. No, sir. It was not. My door is always closed and locked.
Q. Did she in her conversation with you give you any description?
A. Yes, sir, she did.
Q. How tall did she tell you that nigger was, six feet?
A. No, sir. She said he was medium height, she judged around 5.10.
Q. Do you know how tall her husband is?
A. Off hand, I cannot say.
Q. Did she tell you he was taller than her husband?
A. No, she did not.
Q. Did she tell you he was around twenty-five?
A. No, sir.
Q. Did she describe his color, or whether he had a mustache, or anything?
A. She did.
Q. Did she say he had a mustache?
A. No, she did not.
Q. Did she say he didn't have one?
A. She didn't say mustache. She didn't mention anything about mustache.
98 Q. You don't know whether she said he had a mustache, or not?
A. No mustache mentioned whatever.
Q. Did she mention anything about how he was dressed?
A. Yes, sir.
Q. Do you remember what she mentioned?

A. Blue trousers.
Q. Do you remember?
A. Yes, sir, I do.
Q. Did you hear any scream?
A. No, sir.
Q. Didn't hear any scream that day?
A. No, sir.
Q. She lived next door to your property?
A. Yes, sir.
Q. That was summertime?
A. Yes, sir.
Q. A warm day?
A. Yes, sir.
Q. Sun shining?
A. Yes, sir.
Q. Were the windows up?
A. No. They were all locked.
Q. You had all your windows closed?
A. Yes, sir.
Q. On a hot August day?
A. I had a window fan in my dining room so I had the house closed except one window.
Q. How close is her house to your house?
A. Do you want it in feet or yards?
Q. I would appreciate it by yards.
A. I would judge roughly about six or eight yards.
Q. You were side by side?
A. Yes, sir.
Q. Do you remember if her house at that time had a window fan, or anything?
A. It did not.
Q. Were the windows up?
A. Her bedroom windows were not up.
Q. You remember her bedroom windows were not up?
99 A. Yes, sir.
Q. Does she have a big fan or anything?
A. No, sir.
Q. The windows were down?
A. Yes, sir, they were.
Q. You remember that?
A. Yes, sir, I do.
Q. Did you go and check up later? You say you remember the bedroom windows were down. Didn't you take her straight to the hospital from your house?
A. No, sir, not until after the detectives and police came out and gave me permission to take her to the hospital.
Q. Did you go to her house before you went to the hospital?

A. I went out in my front yard and looked.
Q. Haven't the police talked to you about this case?
A. No, sir.
Q. Haven't they talked to you about it?
A. No.
Q. Have you ever talked to the police about the case?
A. No; I have not.

W. R. CLARK, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. Will you state your name to the Jury, please.
A. Wilmer Rucker Clark, Jr.
Q. What is your occupation?
A. Salesman.
Q. Where were you at approximately one o'clock on the 28th of July of this year?
A. At approximately one o'clock I was proximately at the corner of Fairview Avenue and Cleveland.
Q. Now, around that time did you see this defendant here?
A. Previous to that time.

Mr. MCGEE: I object to the question as leading.

By the SOLICITOR:

Q. What time did you see him?

100 The COURT: He can answer the question yes or no. Overrule the objection.
Mr. MCGEE: I would like an exception.
The COURT: You may have an exception.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. What time did you see this defendant?
A. It was some short time before one.
Q. Where did you see him?
A. At the corner of National and Cleveland.
Q. Where were you going at that time?

Mr. MCGEE: I object to the question as immaterial and a hearsay answer, an irrelevant and prejudicial answer.

The COURT: On the question of relevancy, I will sustain the objection to where he was going.

The SOLICITOR: I believe I can connect it up and show where it is relevant.

By the SOLICITOR:

Q. Did you have a conversation with this defendant?

A. Yes.

Q. Which direction were you going when you first saw him?

A. I was at a dead stop at the corner of Cleveland and National. I had stopped because there is a stop sign there, and that is the first time I had seen this person.

Q. What was he doing when you first saw him?

A. He was running up the street toward Fairview Avenue.

Q. Did you have a conversation with him at that time?

A. I had a very limited one.

Q. What did he say to you and what did you say to him?

A. He inquired of me a ride. I asked him where he was going, and he said to town, so I offered him a ride.

Q. Where did he ride in your car?

A. He rode in the back seat.

Q. Where did you let him out?

A. At the corner of Fairview and Cleveland.

Q. That is where he got out of the car?

A. Yes, sir.

Q. He got in where?

101 A. At the corner of National and Cleveland.

Q. Approximately how many blocks did you carry him?

A. I say approximately five or six, whatever it is from there to Fairview Avenue.

Q. Did he ask to be put out?

A. Yes.

Q. Did you notice anything unusual about the defendant?

A. Yes, sir; I did.

Q. What was it?

A. First of all, it is customary for anyone asking a ride of anyone else, with anyone else, to be courteous.

Mr. MCGEE: I move to strike the answer on the ground it is prejudicial and not responsive to the question.

The COURT: The objection is sustained as to any discourtesy, or anything of that kind.

By the SOLICITOR:

Q. Did you notice anything unusual about this defendant from a physical standpoint?

Mr. McGee: That is objected to, unless he makes it more clear what is meant by unusual, unless it can be connected up with this case.

The Solicitor: I would like to finish the question.

The Court: Go ahead.

By the Solicitor:

Q. Did you notice anything unusual about him in a physical manner?

Mr. McGee: I object.

The Court: Overrule the objection.

Mr. McGee: I would like an exception.

The Court: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By the Solicitor:

Q. You may answer the question.

A. That individual was dressed very neatly, but was sweating profusely and smelled very loudly.

Q. Can you tell us how he was dressed?

A. Only approximately. I have an impression, a loud shirt, straw hat, neatly pressed pants.

Q. Do you remember the color of the pants?

102 A. My impression is the pants were blue.

Q. Have you seen this defendant from that time to this day, have you seen him since then?

A. Yes.

Q. Where did you see him?

A. In the jail.

Q. In the Montgomery County Jail?

A. Across the street, whatever that is, the jail across the street from the courthouse.

Q. Who was with you when you saw him?

A. There was one officer, one detective, present.

Q. Do you know who he was?

A. I don't recall his name. I was introduced, but I don't recall his name.

Q. Did you have a conversation with this defendant?

A. Yes, sir: I did.

Q. Who was present besides yourself?

A. One officer.

Q. Whose name you don't know.

A. Right.

Q. Did you threaten this defendant, did you offer him anything, did you coerce him?

A. Definitely not.

Q. Did anyone offer him anything, promise him anything, give him any hope or promise of reward in your presence or hearing?

A. No.

Q. Will you tell the Jury the conversation you had with this defendant?

Mr. McGee: I would like to have the witness questioned if this is going to be in the nature of a confession.

The Court: Have you any testimony as to this particular occasion contrary to what has been testified to?

Mr. McGee: I might have. To save the time of the Court to prepare a statement, I can tell you what I have in mind.

The Court: You may state right here what you have in mind.

Mr. McGee: The evidence I have is that he was picked up by two deputies, and, according to what the Sheriff, the Chief Deputy told me, he was only there for about two minutes and carried
103 on out to Kilby. That is what the Sheriff and Chief Deputy told me. The defendant tells me at the time he was picked up by two deputies, on his way down to the County Jail he was threatened and worried by the two deputies carrying him. I think such evidence as that would be admissible, if he was only there two minutes, have some effect on anything he said.

The Court: I will overrule the objection to it.

Mr. McGee: I move the Court to grant a hearing on the admissibility of this alleged confession on the ground that certain statements were extracted by officers of the State of Alabama from this seventeen year old colored defendant while he was being held incommunicado in the State Penitentiary at Kilby in Montgomery County, Alabama, and that said statements were extracted from the defendant after he had been continuously questioned, questioning in a series for a long period of time, for a period of hours, which questioning took part of at least two days, and part of the questioning was done in the room with the electric chair. And also during such questioning certain officers told the defendant if he confessed that would keep him out of the electric chair, and otherwise he was going to fry. And such conduct violated the defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

By the Court:

Q. Did you have conversation with this Defendant in Kilby Prison?

A. No, sir.

The Court: The motion is overruled.

Mr. McGee: I would like to have an exception.

The COURT: You may have an exception.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. You can refresh your recollection on the calendar back here, and I will ask you if you recall what date you saw the defendant in the County Jail.
A. I couldn't say.
Q. Look at the calendar over there to refresh your recollection.
A. I think it was the 17th.
Q. Did the defendant recognize you?
A. He stated that he did.
Q. Will you tell us what other conversation you had with
104 him?
A. Well, I asked him if I was the person that picked him up and he said, "yes, sir, you are."
Q. Did he say where you had picked him up?
A. I included that in my question. He said the corner of National and Cleveland.
Q. And he said that you were the one that picked him up?
A. He said, "yes, sir; I am the one you picked up."
Q. Do you know where Mrs. Crowder was living at that time?
A. I do approximately. She lived at that time about—

Mr. MCGEE: I object.
The COURT: If this is a guess, I sustain the objection.

CROSS-EXAMINATION.

By Mr. MCGEE:

Q. You said there was something unusual about the nigger's physical appearance when you saw him?
A. I didn't use the word "nigger."
Q. You said there was something unusual about his appearance? Just answer the question.
A. Yes, sir.
Q. You said the unusual thing to you was he was sweating profusely and smelled bad; is that correct?
A. I used the word "loudly."
Q. When you first saw him he was running? You testify under oath when you first saw that nigger he was running; is that correct?
A. That is right.
Q. This was in August or July?
A. July.
Q. Was it July?
A. Right.

Q. In the summertime, wasn't it?

A. Yes, sir.

Q. You consider it unusual for a nigger running in the summertime in Montgomery to be sweating and smelling loudly; would you consider it unusual for a nigger running?

A. I would consider it unusual for a person dressed so carefully to allow himself to become that way.

Q. Is there anything unusual to ride around down there
105 and see a nigger boy running by and ask you to give him a lift?

A. I didn't know the nigger boy, as you say, when I asked him to get in.

Q. Were you South or North of Fairview?

A. I was at the corner of National and Cleveland. I don't know. That is where I was.

Q. You know where Ridgecrest is, don't you?

A. That is to the left of where I was.

Q. Do you know where Ridgecrest is?

A. Yes.

Q. You know where Fairview is?

A. Right.

Q. Ridgecrest runs South of Fairview, does it not?

A. I was at the corner of National and Cleveland.

Q. Answer my question.

A. I am not sure. I don't know the points of the compass that well. I know where I was.

Q. Do you know how many blocks South of Fairview you were at the time you saw this nigger?

A. Not precisely.

Q. Approximately how many?

A. Approximately six or seven blocks.

Q. The first time you said you didn't know whether South or North. Why did you first tell the Jury you didn't know whether you were North or South of Fairview? You now say South of Fairview six or seven blocks.

A. Naturally, you are well schooled in the art of confusion.

Q. How many blocks did you carry him in the car before he got out?

A. I don't know. I previously stated I didn't know how many blocks it was from the point I picked him up until the point I let him out.

Q. Six or seven?

A. I said approximately.

Q. Approximately six or seven?

A. That could be correct. I am not sure.

Q. What did he say to you?

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A. At first he asked me for a ride.

Q. While he was running.

A. Yes. And then he got in the car, and I asked him to sit in the back seat, and he sat quiet until I spoke first, and I had been
106 talking with my wife only about thirty minutes previously about some old clothes we had. I asked him if he went to Church and if he had a pastor who might dispose of those clothes.

Q. Where are you a salesman?

A. I travel South Alabama.

Q. For whom?

A. Bauer and Black.

Q. What kind of outfit is that?

A. Surgical dressings, one of the two largest in the world.

Q. Have you discussed this case with the Solicitor?

A. I don't exactly know what you mean by discussing the case.

Q. Exactly what I said.

A. I have mentioned my part in it to him, yes.

Q. Both to Mr. Thetford and Mr. Stewart?

A. No comprehensive discussion of the case at all.

Q. Are you related to any of the parties involved in the case?

A. No.

Q. Any of them friends of yours?

A. No.

Q. Did you ever know the defendant?

A. No.

Q. At the time you talked to this boy in the County Jail tell the Jury exactly what you said to him.

A. As I previously stated, I only have an impression of what I said to him; I cannot give a verbatum report of the conversation because I don't recall it in detail.

Q. This is just a few days ago.

A. I think it was on the 17th of this month.

Q. On Monday?

A. That would be Monday, if I recall it correctly. I could be mistaken.

Q. In other words, you cannot tell exactly what you said a couple of weeks ago, but way back last summer you can recall in detail the conversation without any great trouble now; is that correct?

A. I know he very definitely stated he remembered me, but I don't remember the conversation verbatum.

Q. What is your interest in this case?

A. I am interested as a citizen of the State of Alabama to see that justice is done.

107 Q. Did you go down and tell the police right after you picked this nigger up and had given him a ride?

A. Repeat that question.

Q. When did you approach the officers of the City or State in this case?

A. The next morning I picked up the newspaper and read where an offense was committed against one of my neighbors.

Q. Offense committed against one of your neighbors?

A. I consider anyone living in the same general area a neighbor.

Q. When you—

A. I didn't finish my answer.

Q. Go ahead and finish your answer.

A. I have a wife and children, and travel, and am away most of the week and, naturally, I have to consider the safety of my own home.

Mr. McGEE: I object to that.

The WITNESS: That is my interest in the case.

By Mr. McGEE:

Q. When did you first approach the officers after you saw the newspaper?

A. That is why I went, because I was worried about my home.

The COURT: That testimony may be excluded. You asked him when it was, and the answer was not responsive.

By the COURT:

Q. You may testify when you first approached a police officer. Just confine your answer to the question.

A. The next day.

By Mr. McGEE:

Q. What time?

A. Approximately 9 o'clock in the morning.

Q. After you read the paper.

A. Yes.

Q. Did you carry a description of him to the police?

A. I don't recall.

Q. Didn't describe how he was dressed?

A. I don't remember. I cannot state that. I am not sure.

Q. What officer did you talk to first?

A. I don't know that.

Q. Who did you talk to next?

A. I don't recall.

108 Q. When did you next talk to them?

A. I was on the road, and when I returned home, as I recall.

Q. When did you next talk to him?

A. I don't remember exactly. Some police officer left a message at my home to call him, which I did when I returned home.

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Q. When was it, July, August, September, October, November?
A. I would say it was in July.
Q. In July?
A. No. It could have been the early part of August.
Q. Did you go down and talk to the police officer?
A. No. They came to my home.
Q. Who came out there?
A. I don't recall the officers' name.
Q. You don't recall the officers' name who came there then?
A. No.
Q. Did you talk to him anymore before the trial of this case?
A. Oh, yes, sir.
Q. When did you next talk to him?
A. They came out to my home once again after that.
Q. Do you remember when?
A. No.
Q. Do you remember who?
A. No.
Q. You don't remember the name of the deputy at the County Jail with you, do you?
A. One of the officers called me that morning by the name of Goines.
Q. Did he come to the house to get you?
A. No; I came in my own car.
Q. You came down voluntarily in your own car?
A. Yes, sir.
Q. Didn't this boy just remain silent when you were over there talking to him in the County Jail?
A. No. He answered my question.
Q. Don't you recall the very first thing you said, "we don't like white women being raped by niggers here?"
A. That wasn't the first thing I said to him.
Q. What was the first thing said to him?
A. I am not sure.

109 RE-DIRECT EXAMINATION.

By the SOLICITOR:

Q. Did you know Mrs. Crowder prior to this?
A. No, sir.

(5 minute recess. The Jury retired to the Jury Room in charge of the bailiff.)

3:34 o'clock P.M.
The Court reconvened.
Parties present as before noted.

GEORGE HAROLD KOJAC, having been duly sworn, was examined and tesified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. Will you state your name to the Jury, please.
A. George Harold Kojac.
Q. You are an officer in the United States Air Force?
A. That is right, sir.
Q. What is your occupation?
A. Lieutenant Colonel.
Q. You are a medical doctor?
A. That is right, sir.
Q. What institutions of higher learning have you attended and what degrees have you obtained?
A. Went to Rutgers University and obtained a B.S. degree; then went to Columbia University, College of Physicians and Surgeons, and obtained a Doctor's Degree, M.D.
Q. In what hospital did you intern?
A. The Morris Ania City Hospital in New York City. And just recently completed a three year residence in obstetrics and gynecology at County Hospital in St. Antonio, Texas.
Q. How long have you been practicing your profession?
A. Since 1938.
Q. Where are you presently stationed?
A. At Maxwell Air Force Base.
110 Q. Do you know Mrs. Ann Crowder?
A. Mabel Crowder, not Ann Crowder.
Q. That is the same lady who was on the witness stand?
A. That is right.
Q. Out in the witness room now?
A. That is right.
Q. Have you ever examined her?
A. Yes; I have.
Q. On what date did you examine her?
A. On the 28th of July, 1952.
Q. Where did you examine her?
A. In the Obstetrical Clinic at Maxwell Air Force Base.
Q. Approximately what time did you examine her?
A. Five minutes of three.
Q. Will you tell the Jury what her condition was at that time.
A. At that time she was referred to me by the Attending Surgeon for a pelvic examination, and she had numerous bruises, contusions and abrasions of the head and face which had been previously taken

care of by the Attending Surgeon. And had abrasions over the left iliac crest.

Q. Where is that?

A. Over the hip bone. That is the anterior aspect of the left side. I did the pelvic examination, and that, with the exception of the fact that there was some grayish oozing discharge of the vagina, there was no other injuries revealed to the female genitalia.

Q. Could you describe the extent of the bruises, contusions and lacerations you have stated, where were they?

A. I would be describing someone else's findings in that respect. She was examined more closely by the Attending Surgeon and by the neurologist. In view of that fact I asked for a neurological examination, asked for a neurologist to come in to see the patient in question.

Q. Who is that?

A. Dr. Zarling.

Q. Did you take a smear from her vagina?

A. Three smears. One from the vulva, the lips of the vagina, and one from within the uterus, and the other from the viscera prominence, which is the tip of the vagina.

111 Q. What test was performed?

A. I forwarded the three specimens to the laboratory technician to examine the spermatozoa.

Q. Could you tell what the result of the test was?

Mr. McGee: That is objected to unless he made it.

The Court: If it is a test in the regular course and under his control and he knows the result of the test, he can testify.

By the Court:

Q. Do you know?

A. Yes, sir; I do. Positive spermatozoa. Spermatozoa were found in the specimen.

By the Solicitor:

Q. Am I right in saying you are talking about male spermatozoa?

A. I am. That is right, sir.

Q. Do you know whether they were living?

A. No motility was noted. Generally they were not living.

Cross-examination.

By Mr. McGee:

Q. You said you took what you call a smear. Just what is that?

A. A smear of the female genitalia extending backward from

the lips of the vagina, and by laboratory examination to determine any abnormalities which might be found within the vulva, and which includes the uterus and womb, an examination of her reproductive organs, also includes direct physical examination of the surface for any indication of injury, or infection and spermatozoa.

Q. You said no other injuries; some grayish discharge of the vagina, and no other injuries.

A. That is right.

Q. Was that discharge from an injury?

A. No, sir.

Q. Any injury to the upper boundary?

A. No.

Q. How about the lower boundary?

A. No evidence of any contusion.

Q. You testified about this spermatozoa. Do you mean you were there at the time the test was run?

A. I didn't say I knew it was spermatozoa.

Q. I believe when I made an objection to the Court you said you did know.

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The COURT: He testified that he knew the result of the tests which were made under his direction and under his instructions. He testified the tests showed it was positive spermatozoa.

By Mr. McGEE:

Q. Was that test run under your direction?

A. That is right.

Q. Were you there when the test was run?

A. No.

Q. You sent it over to the laboratory to have it run?

A. In our own laboratory. It was taken to the laboratory and given to the laboratory technician.

Q. Did you take it there?

A. I took the three test tubes.

Q. Did you remain when he ran the test.

A. No, sir.

Q. You didn't run the test on it?

A. No, sir. Excuse me one moment. You asked me did I make the test?

Q. Yes.

A. I directed the test in writing. In other words, I made out a routine slip.

Q. You never remained to see if your directions were carried out?

A. No, sir.

Q. You didn't stay there?

A. Not while the test was being run.

Q. Were you sent a clinical report?

A. I was.
Q. A chemical analysis?
A. Yes, sir.
Q. The testimony you have given is a result of that chemical analysis?
A. Yes, sir.

Mr. McGee: I object to this testimony and make a motion that it be excluded from the record.
The Court: Objection overruled.
Mr. McGee: I would like an exception.
The Court: You may have an exception.

(Exception noted for the defendant by direction of the
113 Court.)

By Mr. McGee:

Q. When you made the statement it was spermotozoa in that smear you took, you are basing your statement on the result of the test sent to you from the lab?
A. That is right.
Q. Who made that test?
A. Mr. Johnson.
Q. Is he a doctor?
A. No, sir.
Q. Has he had any qualified medical training that you know of?
A. I don't know.
Q. You don't know of any medical training that he has had that you know of?
A. I don't know.
Q. You were not there when he made the test?
A. That is right.
Q. The only thing you are testifying to is the result of the test he had made?
A. That is right.
Q. You say there was no motility in that spermatozoa, they were not alive?
A. That is right.
Q. You concluded they were dead?
A. That is right.
Q. The fact that there was no motility, is that based on the result of the test of the smear?
A. Yes, sir.
Q. How long does it take spermatozoa to die?
A. It varies in individuals. It depends upon the individual person, and depends upon the individual who generates the spermatozoa.

Q. What is the average time the spermatozoa will continue to live?
A. It would vary.
Q. In the vagina, I mean.
A. It may vary from less than one hour to twenty-four hours.
Q. Would it be an average of less than a day?
A. No.
Q. I am talking about average.
A. I dare say eight to twelve hours.
114 Q. Eight to twelve hours is the average life time of male spermatozoa in the vagina?
A. Yes, sir.
Q. What time did you have those smears run off?
A. At approximately a little after three o'clock.

C. N. JOHNSON, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. Where are you employed?
A. Out at the Maxwell Air Force Base in Montgomery.
Q. What is your occupation?
A. I am Chief Laboratory Supervisor of the entire lab.
Q. You are Chief Laboratory Supervisor?
A. Yes, sir.
Q. What training have you had for that position?
A. I have a B.S. Degree from Mississippi State in 1932, and had 18 years experience, and certified Civil Service in laboratory.
Q. Did you run a test on three smears submitted to you by Colonel Kojac on July 28th, smears taken from Mrs. Ann Crowder?
A. Yes, sir; I did.
Q. What did you find from those smears?
A. They had live spermatozoa cells that apparently wasn't more than three or four hours old.
Q. Your findings were they were alive?
A. Yes, sir.

CROSS-EXAMINATION.

By Mr. MCGEE:

Q. Still alive when you made the tests?
A. Yes, sir.
Q. You made the examination of the specimens yourself?
A. Yes, sir.

Q. To determine if there was spermatozoa in the specimens?
A. Yes, sir.
Q. And were alive?
A. Yes, sir.
Q. And were not older than three or four hours?
115 A. That is right.
Q. You put your findings down on a slip of paper?
A. Yes, sir.
Q. Dr. Kojac wasn't with you at the time you made the examination?
A. No, sir. I carried the report directly to him.
Q. The reason you run a test of the three smears was because Dr. Kojac came to you and asked you to run a test of the three smears for spermatozoa?
A. Yes, sir.
Q. You personally ran them by yourself?
A. Yes, sir.
Q. He wasn't with you?
A. No, sir.
Q. You found they were live spermatozoa three or four hours old?
A. Yes, sir.
Q. You wrote it on a slip of paper?
A. Yes, sir.
Q. Did you return it to Dr. Kojac yourself?
A. I returned it to him personally.
Q. He had your report today when he was sitting on the stand?
A. Yes, sir.
Q. You received a B.S. Degree at Mississippi State in 1932?
A. Yes, sir.
Q. What kind of lab training did you have at college?
A. I took a regular course in general science.
Q. Were you given a good bit of laboratory work during the time you were in college?
A. Yes, sir, full line of the biological sciences.

VIRGIL R. ZARLING, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. By whom are you employed?
A. By the United States Air Force.
Q. You are an officer in the United States Air Force?
A. Yes, sir.

Q. What is your rank?

116 A. Major.

Q. What institutions of higher learning have you attended and what degrees have you received?

A. I have a Bachelor of Science, Bachelor of Medicine, and Doctor of Medicine from the University of Minnesota; I have been in post-graduate training at the Baltimore City Hospital, at Johns Hopkins Hospital, Santa Clara University, University of Southern California, and University of Minnesota.

Q. Did you complete training, internship?

A. Yes, sir.

Q. Where?

A. Baltimore City Hospital.

Q. Do you specialize?

A. Yes, sir.

Q. In what?

A. In neurology.

Q. How long have you been practicing medicine?

A. I graduated from school in 1943—nine years.

Q. Have you been continuously practicing your profession since that time?

A. Yes, sir.

Q. Where are you presently stationed?

A. Maxwell Air Force Base.

Q. In Montgomery?

A. In Montgomery.

Q. Did you on July 28th examine a Mrs. Ann Crowder?

A. I did.

Q. Where did you examine her?

A. I saw her initially in the OBGYN Clinic in the Maxwell Air Force Base Hospital, out patient clinic.

Q. What is that OBGYN?

A. Obstetrics and Gynecology Clinic.

Q. Approximately what time did you see her?

A. I don't remember exactly, but it was around three or three-thirty in the afternoon.

Q. What was her condition at that time?

A. At that time she was lying on an examining table in the clinic. At that time she had swelling and bruises on the right cheek, and in the parotid gland area behind the jaw on the right.

Swelling of the left cheek over the cheek bone. She had a

117 hemorrhage of the right eye, and she had swelling, much swelling and bruises and lacerations of the right forehead front and rear; had a swollen, red area over the entire back of the head on both sides, with superficial skin lacerations there; had a small bruise over the bridge of her nose.

Q. Did you find any bruises on her body?

A. She had, I believe, a bruise on one hip. I noticed no others at that time.

Q. Did you treat her, or prescribe treatment for that condition?

A. I admitted her to neurology service at the hospital because of the head injuries, and because of complaint of pains in the head at that time, and as a precautionary measure we admit them to the hospital and observe them for a period of time.

Q. How long did she stay in the hospital?

A. She was discharged the 31st of July, about three days.

Q. Has she been under treatment for head injuries, for these same head injuries you have described, since that time?

A. I have seen her once since, and did an entire laboratory procedure, to tell if the injury has healed during the period of her crystallization.

Q. Is she still under treatment?

A. No, she isn't under treatment now.

CROSS-EXAMINATION.

By Mr. McGEE:

Q. What do you mean by laboratory procedure?

A. It is a specialized laboratory procedure. We take an electrocorticogram.

Q. What is the purpose of that?

A. When you do an operation ECG, it is an electrical device which records the electric activity in the brain through the skull and scalp, which indicates the presence of distention of the brain substance, brain cells.

Q. Is it an apparatus by which you can determine whether or not the brain itself is injured?

A. Yes, sir.

Q. Or functioning wrongfully?

A. Yes, sir. It is similar to an electro-cardiogram which are recordings made from the heart. We have this made from
118 the brain. It is a much more sensitive and technical apparatus.

Q. Do you know whether or not you made an X-ray of the head to determine whether there was a skull fracture or anything?

A. I am quite sure I did—at least, I ordinarily do—but I don't remember it at this time.

Q. If she had a skull fracture you would remember it?

A. Yes, sir.

Q. Probably she wouldn't be discharged in three days if there had been a skull fracture?

A. Probably.

Q. You say she was discharged about the 31st of July?

A. Yes, sir.
Q. And said she has been to you once since then?
A. Yes, sir.
Q. Do you know when that was approximately?
A. I think about the 8th of October.
Q. And she is not under treatment now.
A. No.
Q. When you examined her and took this laboratory procedure on her at this time in October, did you determine there was nothing wrong with her brain?
A. In October there is an improvement from the previous record. It was not completely recovered then, and not entirely recovered now.
Q. These head injuries you described were apparent to you at that time?
A. Those are notes I made from the chart.
Q. Were those notes made at the time you examined her?
A. No.
Q. You testified from those notes, didn't you?
A. Those are to refresh my memory.
Q. Were they made at the time you examined her?
A. No.
Q. Did you copy them from the chart this morning?
A. No.
Q. When did you copy them?
A. Yes, sir; I believe I copied them this morning.

Mr. McGee: I move to exclude the evidence from the case, his description of the head injuries, on the ground he is testifying from hearsay.

119 The Court: He has had that paper in his hand testifying openly right from the beginning. The objection is overruled.

Mr. McGee: I would like an exception.

The Court: You may have an exception. You had a right to ask him while he had it in his hand. You always have a right to ask about anything that is in a witness' hand.

Mr. McGee: I didn't know that.

(Exception noted for the defendant by direction of the Court.)

By Mr. McGee:

Q. Anyway, you say she is not now under treatment?
A. No.
Q. Were you with Dr. Kojac at the time he made his pelvic examination?
A. No; I wasn't.

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C. J. REHLING, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. Will you state your name to the Jury, please.
A. C. J. Rehling.
Q. What is your present occupation or position?
A. Director of the State Department of Toxicology and Criminal Investigation.
Q. What institutions of higher learning have you attended and what degrees have you obtained.
A. I have received a Bachelor's Degree from Auburn, Master's Degree from that institution, Doctor of Philosophy, University of Wisconsin, Bachelor of Law's from Jones Law School of Montgomery.
Q. How long have you been engaged in or have you been connected with the State Department of Toxicology and Criminal Investigation?
A. Almost sixteen years.
Q. When did you become Director?
A. 1945.
Q. In the course of your employment, are you called upon to investigate various crimes?
A. Yes.
120 Q. Are you called upon to make physical examinations of both living and dead bodies?
A. Yes; I am.
Q. Were you asked or requested by the Police Department of Montgomery to conduct an investigation at the home of Mrs. Ann Crowder?
A. Yes.
Q. When did you go out there?
A. I will have to refer to my notes for that purpose. That was the 31st of July when I received the case and when I went out there. Mr. and Mrs. Crowder were there on that date.
Q. Now, when was the first time you ever saw this defendant?
A. On November 11th of this year.
Q. Where did you see him?
A. Saw him at Kilby Prison.
Q. Did you make an examination of him?
A. Yes; I did.
Q. A physical examination?
A. Yes.
Q. Did you find, or did you not find, scratches on his body and legs?

Mr. McGee: I object to the question on the ground it is immaterial whether the doctor observed scratches on the defendant's legs on November 11th. She has given the time of her rape back on July 28th, 1952.

The Court: I don't see the connection.

The Solicitor: Scratches is what I meant to inquire about.

The Court: The objection is sustained then as to any scratches.

By the Solicitor:

Q. Did you find scratches which appeared to, which you might say had happened in July of 1952?

Mr. McGee: I object to the question on the ground it calls for a conclusion. There has been no testimony as to show the defendant was ever scratched, and no one says they scratched him that resulted in a scar on him back in July.

The Solicitor: Mrs. Crowder testified she had two broken fingernails.

The Court: I will sustain the objection. If you want
121 to ask him if he saw any evidence of scars upon him. The weight to be given any witness' testimony is for the Jury, and will be covered by the Court in his charge.

By the Solicitor:

Q. Did you find any scars on his body?

A. Yes; I did.

Q. Did you find scars which appeared to have been made in July or August of 1952, which would be consistent with a broken fingernail?

Mr. McGee: That is objected to as a conclusion of the witness.

The Court: Overrule the objection.

Mr. McGee: I would like an exception.

The Court: Exception granted.

(Exception noted for the defendant by direction of the Court.)

The Witness: On his right forearm there were two scratches, or scars I should say, that had been scratches which had completely healed, and were inflicted, in my opinion—at most, I would say, several months prior, and I cannot be more definite. The one being just above the wrist of the arm. The other half way up the right forearm, with the abrasion downward which changed direction to the side and bilaterally turned in.

Mr. McGee: I object to that as not responsive to the question.

The Court: Objection overruled.

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Mr. McGEE: I would like an exception.
The COURT: Exception granted.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. Would the type of scar you have testified about be consistent with a broken fingernail, a fingernail breaking as it scratched?

Mr. McGEE: That is objected to on the ground it is a legal conclusion, and hypothecating a question to an expert when he has no ground in the testimony in the case to support that hypothesis.
The COURT: The Court, although he is an expert, sustains the objection. We are getting into the realm of conjecture and speculation. On that ground I will sustain the objection.

122 By the SOLICITOR:

Q. Could that scratch have been made by a fingernail?
A. Yes.
Q. That is broken?
A. Yes.
Q. Did you take these pictures? (Indicating)
A. Yes, sir; I did.
Q. Did you take them at Kilby on November 11th, 1952?
A. Yes; I did.
Q. Is that a picture of the defendant in this case? (Indicating)
A. It is.

The SOLICITOR: We offer that picture in evidence.
Mr. McGEE: I object to the offer of the picture on the ground it is prejudicial and immaterial.
The COURT: Objection overruled.
Mr. McGEE: I would like an exception.
The COURT: Exception for the defendant.
(Exception noted for the defendant by direction of the Court.)

(Photograph referred to and offered in evidence marked "State Exhibit 1, 11/28/1952, WHL.")

By the SOLICITOR:

Q. Does this picture show the scratches you have described?
A. Yes, it does.
Q. Will you step here in front of the Jury?

Mr. McGEE: I object to any further examination about that picture to the Jury and referring to scratches on there. It is in

violation of the defendant's constitutional rights granted under the Fourteenth Amendment to the Constitution of the United States.

The COURT: The Court has already ruled on the objection and the picture is in evidence, and the present objection is overruled.

Mr. MCGEE: I would like to reserve an exception.

The COURT: An exception is granted the defendant.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. I show you this picture which is marked Exhibit S 1. Will you show the Jury the scratches?

Mr. MCGEE: I object to the Solicitor referring to scratches.

123 The SOLICITOR: I will change it to scars.

The COURT: Changing it to scars you may testify.

By the SOLICITOR:

Q. Point out to the Jury the scars you referred to.

A. The lower right forearm here consists of two scars concerning which I have already given testimony. One is about midway of the forearm, the other just above the wrist, with change of direction in the center, and especially the one on the lower forearm, a sudden turning, which I have described. (Indicating)

Q. About what time did you take these pictures?

A. Between 2:30 and 3 o'clock the afternoon of November 11th.

Q. Did you have a conversation with the Defendant?

A. Yes, a limited one.

Q. Who was with you?

A. There was no one in the immediate room while I was examining him. The Deputy Sheriff, George Mosley, was out in the hall, and three victims were out in the hall with him at that time, and one of the Wardens was there.

Q. Did anyone threaten him, coerce him, offer him anything, or make any promises to get a statement from him?

A. No.

Q. In your presence or hearing?

A. No.

Q. Did you?

A. No; I did not.

By the COURT:

Q. Did you say you talked to him with no one in the room when you talked to him.

A. That is right.

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By the SOLICITOR:

Q. Did he complain about being mistreated in any way?
A. He did not.
Q. Did you ask him how he was being treated?
A. No, not in those words. I asked him the question how he was getting along.
Q. And what did he say?
A. He said all right.

124 CROSS-EXAMINATION.

By Mr. McGEE:

Q. You had him stripped completely naked, did you?
A. Yes; I did.
Q. And while he was completely naked you took several pictures of him completely nude, didn't you?
A. No; I did not.
Q. How many pictures did you take of him?
A. I took three or four different shots of him.
Q. Three or four different shots?
A. Yes, sir.
Q. Were any while he was nude?
A. No. He was stripped to the waist when I took the photographs.
Q. You did have him strip completely first?
A. I examined him while he was completely stripped, yes.
Q. When you say you talked with him, did you carry on a discussion or any other sort of conversation?
A. I asked him where he got the marks, or how, we have referred to so often.
Q. At that time he didn't tell you he raped Mrs. Crowder, did he?
A. No.
Q. Did you ask him about that?
A. I did not.
Q. Did you ask him anything about any of these cases?
A. Yes. I asked him relative to an injury on the side of his neck, whether he didn't receive that doing this, and he said yes.
Q. Did you ask him about any other rape?
A. No; I did not.
Q. How long were you out there?
A. I suppose I was with him thirty minutes, something like that.
Q. You are not a medical doctor?
A. I am not.
Q. Not a physician?
A. No, sir.
Q. Whether the marks on the skin were from a skin disease or skin injuries, you don't know anything about that?

A. I am not a dermatologist.

Q. These two scars, your investigation revealed nothing to indicate they were made by a fingernail?

125 A. No.

Q. Could have been made by something else?

A. It is possible, yes.

Q. You say you made an examination out at the Crowder home?

A. Yes.

Q. You were not the first criminal investigator out there, were you?

A. No.

Q. Do you know if they found any fingerprints out there?

A. No; I don't.

Q. You didn't get any?

A. No.

Q. In the ordinary course of procedure this defendant was fingerprinted as soon as he was picked up?

A. I don't know.

Q. They normally fingerprint him before he is brought to trial for a criminal, or capital offense?

A. That is the usual procedure.

Q. Did you testify to fingerprints before the Grand Jury?

A. I did not. I didn't handle that phase of it.

Q. What did your investigation consist of out there, examine the bedroom?

A. Yes. I examined the bedroom for evidence of foreign substance in the room.

Q. Did you find any?

A. I did not, not foreign material. I did not, I could distinguish as such.

Q. Did you talk to Mrs. Crowder?

A. Just briefly.

Q. Did Mrs. Crowder tell you she had broken a couple of fingernails?

A. No. I didn't inquire.

Q. One of the first things done is to examine the fingernails of the prosecutrix to see if you cannot find some trace of the anatomy of the person who attacked her; isn't that the normal procedure?

A. If her hands haven't been cleansed meanwhile.

Q. Do you know whether Mrs. Crowder's hands were examined for that?

A. No; I don't know.

RE-DIRECT EXAMINATION.

By the SOLICITOR:

Q. In your examination of the defendant at Kilby did you
126 find any evidence whatsoever of any physical mistreatment?
A. I did not.

RE-CROSS EXAMINATION.

By Mr. McGEE:

Q. Didn't you just testify he had some scratch on the side of his neck?

A. I found a fingernail scratch on the side of his neck he admitted receiving the day before.

Q. You said something about a blow on the side of the neck.

A. Apparently you heard wrong. I testified to no such thing; I made no such statement.

Q. A scratch on the side of his neck?

A. It was a scratch on the side of his neck. This large. (Indicating.)

Q. And this is on Tuesday.

A. On Tuesday afternoon.

Q. You answered the scratch looked like it was made the day before.

A. It was a fresh scratch which he admitted receiving the day before.

Q. Do you know that he was first taken to Kilby the day before?

A. The day before is my information.

RE-DIRECT EXAMINATION.

By the SOLICITOR:

Q. Did he tell you where he got that scratch?

A. He did.

Q. Where did he say he got it?

A. He said Mrs. Prescott inflicted it upon him.

CLYDE JONES, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. State your name to the Jury.

A. Clyde Jones.

Q. What is your occupation?
A. City detective.
Q. City of Montgomery?
127 A. Yes, sir.
Q. Did you hold that position on July 28th of this year?
A. Yes, sir.
Q. Did you conduct an investigation of the Ann Crowder case?
A. Yes, sir.
Q. Did you go to Mrs. Crowder's home?
A. I did.
Q. What time did you get there?
A. It was between 12:30 and quarter to one; closer to quarter to one.
Q. Could you tell me how far the Crowder home is from the corner of Cleveland and National Avenue?
A. It is what we term a good two blocks.
Q. Which way?
A. It is South of National Avenue.
Q. It is farther from the City than National Avenue is?
A. Yes, sir, it is.
Q. Did you talk to Mrs. Crowder?
A. I did.
Q. Where did you talk to her?
A. In Mrs. Struchko's home. She lives next door. She lives on the North side of Mrs. Crowder.
Q. What was Mrs. Crowder's physical condition when you talked to her?
A. She was pretty upset and pretty beat up.
Q. Were there any physical factors which you could see which showed she had been beat up?
A. Yes. She was beat around her head, her head was bleeding, one side of the head.
Q. Did she complain she had been raped?
A. She did.
Q. Did you go over to Mrs. Crowder's house?
A. No, we didn't go in there right then. We kept the house locked up and wouldn't let anybody in there at that time.
Q. Did you subsequently conduct an investigation in her house?
A. When Dr. Rehling was out there. We didn't even let Mr. Crowder go over there.
Q. What did you find; did you find any evidence of a scuffle?
A. Not much of anything to indicate a scuffle. With the
128 fingerprint man, Mr. Lackey, we tried to get some fingerprints off the doors.
Q. Do you know whether he was successful?
A. He was not.

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Q. When you went into the house did you go into the front bedroom?

A. Yes, sir.

Q. What did you find in the front bedroom, what was the condition of the bedroom?

A. There was a dresser in the far corner, which would be the Northeast corner; there was a rocking-chair there and a bed.

Q. Was there any evidence of a struggle in that room?

A. You couldn't tell too much about it at that time because there wasn't anything too disarranged, other than the cover on the bed.

CROSS-EXAMINATION.

By Mr. McGEE:

Q. You say the fingerprint man did check the house for fingerprints?

A. As far as I know, he checked the house pretty well.

WILLIAM M. STANLEY, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. State your name to the Jury, please.

A. W. M. Stanley.

Q. What is your occupation?

A. Assistant Chief of Police.

Q. City of Montgomery?

A. Yes, sir.

Q. Did you hold that position on July 28th of this year?

A. Yes, sir.

Q. On that day did you go to the home of a Mrs. Struchko?

A. I did.

Q. Where is that?

A. I think the number is about 3844 Cleveland Avenue.

Q. About what time did you get there?

A. About 12:30. Not that. I don't remember the exact time I got out there.

Q. Who did you find there?

129 A. A lady I afterwards learned to be Mrs. Crowder and Mrs. Struchko.

Q. What was Mrs. Crowder's physical condition at that time?

A. Well, at the time I went in she was sitting on a lounge, and was crying, and Mrs. Struchko had a towel putting cold compresses on her head, and she was very much upset and crying.

Q. Did she complain to you about being raped?
A. She did.
Q. Did she describe her assailant?
A. She did.
Q. Does that description fit this defendant?
A. Yes, sir.

CROSS-EXAMINATION.

By Mr. McGEE:

Q. To refresh your recollection, I believe she told you he was taller than her husband?

A. She didn't mention her husband. She looked up at me and said he was about as tall as I am.

Q. How tall are you?

A. Five feet eight and one-half.

Q. If she described to you and the police he was taller than her husband, about 5.10, she was wrong, or are you right?

A. I am right on what she told me at that time. She was sitting on the divan and looking at me, and said the man was about as tall as I was but not quite as heavy, is the way she expressed it.

Q. Are you sure she didn't tell you he was about five feet ten?

A. In attempting to say, she said he was about five feet eight or ten before she looked at me. But then she looked at me and said, "he was about as tall as you are." She didn't ask me how tall I was. She said about the same, but not as heavy.

Q. Did she mention his age?

A. She said he was young.

Q. Did she mention his age?

A. Approximately.

Q. Did she say somewhere between seventeen and twenty-five?

A. I understood her to say between seventeen and twenty-two, along there.

Q. Did she tell you whether or not he had a mustache?

A. She did.

Q. Did or did not have one?

130 A. If I am not mistaken, she said he did have.

Q. He did have a mustache?

A. He did have.

Q. Have you ever seen this defendant before?

A. Not until I came to the Courtroom.

Q. Never interviewed him?

A. No, sir.

Q. Do you remember when you all had him picked up before?

A. No, sir.

Q. Last summer?

A. No, sir.
Q. You don't know anything about that?
A. I don't know anything about that at all.
Q. Were you in charge of the investigation at Mrs. Crowder's house?
A. I was cruising about when the word came out, and I was one of the first officers there, and went in and listened to her description of the way the man was dressed, and then I went back and put the description on the radio.
Q. Do you remember how she said he was dressed?
A. She had said he had on a pair of blue slack pants, and a flowered shirt with yellow, and with that and the approximate size she gave I went back and put it on the radio.
Q. How about a hat?
A. She didn't mention a hat to me.
Q. Didn't mention a hat to you?
A. Not to me at all, no, sir.
Q. The official description you sent out didn't mention a hat?
A. Didn't mention a hat because she didn't say anything about it in the first statement that she made.

131 S. E. SELLERS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. What is your name?
A. S. E. Sellers.
Q. What is your occupation?
A. Policeman, City detective.
Q. Did you go to Kilby Penitentiary on November 10th of this year?
A. Yes, sir.

132-135 CROSS EXAMINATION.

By Mr. McGEE:

Q. How long were you at Kilby with him?
A. I imagine around from thirty to forty minutes.
Q. Was Mr. Dees one of the men in there?
A. Yes, sir.
Q. And George Mosley?
A. Yes, sir.
Q. At that time the nigger was next to the room where the electric chair is?

A. Upstairs, yes, sir.
Q. Did you all question him while you were up there for forty minutes?
A. Did not.
Q. Others questioned him, didn't they?
A. Two or three questioned him.
Q. During the forty minutes didn't he deny having done this at that time.
A. I didn't hear anything he had to say.
Q. You didn't hear him say anything?
A. I didn't hear him say anything.
Q. Was he silent the whole time?
A. Kind of heard something several times.
Q. Don't remember what he said?
A. No.

136 Parties present as before noted.

Mr. McGee: I move the Court to exclude the evidence of the State in this matter and discharge the defendant upon the following grounds:

One. The State has failed to prove the corpus delicti.
The Court: The motion is overruled.
Mr. McGee: I ask for an exception.
The Court: Exception granted.

(Exception noted for the defendant by direction of the Court.)

DEFENDANT'S EVIDENCE

GEORGE HAROLD KOJAC, recalled.

DIRECT EXAMINATION.

By Mr. McGee:

Q. I believe you said the laboratory test was sent back to you of these smears, and from reports of the tests you determined there were no live spermatozoas?
A. No motility.
Q. You concluded they were dead from that?
A. That is right.
Q. Is there any way medical science can take a blood test from a human being, any test made of a man to determine whether or not he is the man who injected that spermatozoa?
A. Not that I know of.
Q. I mean blood test which would compare.

A. Not that I know of. You are referring to typing the type of spermatozoa?
Q. Yes.
A. No way that I know of to ascertain that fact. You are talking about motility?
Q. Yes.
A. Right.

137 CARNELLA REEVES, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. What is your full name?
A. Carnella Reeves.
Q. You work?
A. Yes, sir.
Q. What is your occupation?
A. Cook and nurse.
Q. Cook somewhere?
A. Yes, sir.
Q. Still cook for them?
A. Yes, sir.
Q. Do you know Jeremiah, Jr. here?
A. That is my son.
Q. How old is Jerry?
A. He is seventeen years old.
Q. When was he seventeen?
A. August the 8th.
Q. Of this year?
A. This year.
Q. Do you remember what date it was they first picked him up?
A. No, sir; I cannot even remember exactly the date of it.
Q. What day was it?
A. I would say it was—I cannot remember what day it was.
Q. I mean this time now.
A. The day they picked him up?
Q. Yes. Do you know?
A. On Monday.
Q. To refresh your recollection, was it the Monday before Armistice Day on Tuesday?
A. Yes, sir, it was Monday.
Q. When did you first know he had been picked up?
A. The first I knowed he had been picked up, they called me up on the telephone they had picked up my other son and wanted me

to come on home. I thought that something terrible happened, police all over the house; they wouldn't allow me to tell what
138 happened at my house. And then he said—

The SOLICITOR: I object to this.
The COURT: Objection sustained.

By Mr. McGEE:

Q. Did you see Jerry that Monday?
A. I didn't see Jerry that Monday.
Q. Did you go home?
A. I went home.
Q. Was there any officers there?
A. I got home around exactly four o'clock.
Q. Was there any officers there?
A. Officers came there just about ten minutes after I reached home.
Q. Did the officers tell you where they had Jerry?

The SOLICITOR: I object to that as hearsay.
The COURT: The objection is sustained.
Mr. McGEE: I want to show the fact the officers told the boy's mother on Monday afternoon her boy, he was out at Kilby, and she couldn't see him right then, and they would let her know when she could see him, and it wasn't until Wednesday afternoon Mr. Armstrong told her then she could go to Kilby and see her boy.
The COURT: I will let her testify to that.

My Mr. McGEE:

Q. Did you have a conversation with the police?
A. Yes, sir. They came to the house, Mr. Armstrong, and another one, and asked for Jeremiah's personal belongings. I said, "he has two small boxes in the cabinet, and has a hat in the middle room." They said he did the other rapes. They took it too. I gave them the small box in there Jeremiah keeps his papers and all. They looked at them and kept a lot of the papers. I says, "Mr. Armstrong, can I see him?" He said, "no. I will let you know when you can see him."
Q. Did he tell you where he was?
A. Yes, sir, Kilby. I was coming home on Wednesday afternoon quarter of five from my job—he said, "Carnella, you can go on over to Kilby."
Q. Where were you then?
A. In front of Mr. Armstrong's house.
Q. You pass his house?

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A. Yes, sir.
139 Q. Going home?
A. Yes, sir.
Q. How did he come to do that?
A. He drove up in a car, and he told me to go on over to Kilby and tell Mr. Dees to let me see my boy.
Q. When was this?
A. This is Wednesday afternoon.
Q. The 12th?
A. That is right.
Q. Did you go to Kilby?
A. Went on home and got a man to drive me over in a truck. I had to wait about forty-five minutes before I saw him. When I got there, I said, "Mr. Dees, I would like to see my boy," when I walked in.

The SOLICITOR: I object to any conversation.
The COURT: Sustain the objection.

By Mr. McGEE:

Q. What position does Mr. Dees occupy?
A. "I would like to visit my boy."—
Q. Is he a Deputy Warden at Kilby?
A. Yes, sir.

The SOLICITOR: I object to any conversation between her and Mr. Dees.
The COURT: She hasn't been asked a question about any conversation. I better hear the question before I rule.

By Mr. McGEE:

Q. Did you have a talk with Mr. Dees?
A. Yes, sir.
Q. What did you tell him about seeing your boy?

The SOLICITOR: I object.
The COURT: Objection sustained. You can ask her whether or not she got to see her boy at that time.

By Mr. McGEE:

Q. When did you get to see your boy?
A. See my boy?
Q. What time did you get in?
A. Wait around about forty-five minutes before I could see him.
Q. And did you get to see him?
A. I got to see him about forty-five minutes after I got
140 there.

Q. He never saw anybody before that?
A. That is right.
Q. That is in Kilby Penitentiary out there in Montgomery?
A. Yes, sir.
Q. Was your boy picked up before this?
A. Yes, sir.

The SOLICITOR: I object.

The COURT: A blanket objection doesn't give me anything to rule on.

The SOLICITOR: I object on the ground that it is irrelevant and immaterial. It is not an issue in this case if he was picked up before.

Mr. MCGEE: I promise you I can connect it up. The testimony as to what happened to him, and what was said, is going to be apparent throughout the trial. It would have to be an issue.

The COURT: I don't see where picking him up at another time at this stage of the proceedings has anything to do with it.

Mr. MCGEE: It is, knowledge the papers stated he confessed to attacks on several women.

The SOLICITOR: The State is not offering any evidence except in this case.

Mr. MCGEE: If I told you the complete conversation between this defendant and the police at Kilby it will come out.

The SOLICITOR: If you bring it out.

Mr. MCGEE: This boy here received three days of mental torture in Kilby, and that is what prompted him to confess to all these cases and to conduct himself as he did. They know I can bring in those other witnesses who failed to identify him.

The COURT: I sustain the objection. I will give you the right at this time if it becomes a matter of relevancy in the case, to recall this witness and examine her on direct examination. I am keeping her under summons here until such a time as it becomes an issue in the case, if it does.

Mr. MCGEE: I would like an exception.

The COURT: An exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By Mr. MCGEE:

Q. How far did he go in school?
141 A. Eight.
Q. Went through the 8th grade?
A. Yes, sir.
Q. Is he going to school now?
A. No, sir.
Q. He quit in the 8th?

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A. Yes, sir.

Q. Has he lived with you all his life since he was born?

A. He has lived with me all his life with the exception of three months.

Q. You had an opportunity to observe him very closely?

A. He lived down the street at his grandmother's house just about five houses from me on the corner.

Q. Did you ever observe him act peculiar or abnormal in any way?

A. Yes, sir.

Q. Describe that to the Jury, different actions you observed.

A. At the time of him being three years old or so we lived here on Hall Street, and the house was up on a hill, up steep. The lot wasn't safe without concrete steps to get up there, a pretty bad hill. He fell there and struck right back here, caused his nose to bleed. We had considerable trouble with him before he fell, and after that he got even worse, just bad all the time, and was running away. When I started talking to him he would sit there rocking hours at a time, and wouldn't say anything. I said to his father one day—

The SOLICITOR: I object.

The COURT: Objection sustained.

By the COURT:

Q. Tell what you know when you answer the question.

A. Seen him when he couldn't talk to us, seen him nervous, seen him walk out when I am talking to him, seen him just acting all nervous, and then quiet, and laughs. I seen that.

By Mr. McGEE:

Q. Ever see any other abnormalities?

A. No more than just holding his hands over his head like that, and was looking up and talk to himself. (Indicating)

Q. Did he talk to himself very often?

A. He talked to himself quite often.

Q. Ever see any evidence of crying and laughing in the last year?

142 A. Yes, sir, he would cry. Nobody did nothing to him.

Q. In your opinion, is he normal, insane, or what?

A. In my opinion he is insane.

Q. Do you remember Monday, July the 28th of this year?

A. I found him at home then.

Q. Were you home on that day?

A. Not until four o'clock.

Q. Did you see your boy that day?

A. Yes, sir. My boy was at home.

Q. When did you see your boy at home?

A. On Monday, July the 28th. He would usually be there all day and cut my wood.

Q. What time did you leave home that day?

A. I never goes to work until 8 o'clock.

Q. Was he at home when you left?

A. He was at home when I left.

Q. Was he at home when you got back?

A. He was at home when I got back.

Q. Was he dry or wet with perspiration?

A. Wasn't wet with perspiration when I got home. He wasn't wet with anything.

Q. Do you remember how he was dressed when you got home?

A. Yes, sir; I do.

Q. How was he dressed?

A. He had on a brown shirt and some big blue jeans, too big for him.

Q. Had on a brown shirt?

A. He had on a brown shirt, and blue jeans too large in the waist for him.

Q. Did you see any scratches on him that day or afterwards?

A. I don't know anything about that, no, sir.

Q. Didn't see any scratches on him?

A. I didn't see any scratches on him.

Q. Did he appear nervous or upset?

A. No, sir, he wasn't nervous, not that day when I came home then he wasn't nervous, because he is back in the kitchen and said he has got the water on the table.

Q. He said he had done what?

A. He has put the water on the table ready for me to get supper.

143 Q. You say he went the entire 8th grade?

A. He didn't go to school this past year, not this one.

Q. He didn't go to school this year at all?

A. No, sir. He studied music, go up every day.

Q. Where was he born?

A. Prospect Alley, right back of Crampton Bowl.

Q. Here in Montgomery?

A. Yes, sir.

Q. How much money do you make?

The SOLICITOR: That is objected to.

The COURT: Objection sustained.

Mr. McGEE: I would like to note an exception.

The COURT: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

Mr. McGee: I want to show he comes from a poverty stricken community, a poor family. I would like to make an offer to show he does come from a poverty stricken home which might have some effect on his maturity.

The Solicitor: I object to the offer.

The Court: Objection sustained.

Mr. McGee: I would like an exception.

The Court: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By Mr. McGee:

Q. When you got home were the police at your house that Monday?

A. They had been there I was told afterwards, and came back by the time I got there.

Q. They got all his belongings?

A. They got all his belongings, and carried off seven shirts, some papers and some pants.

Q. Has he got a blue or black shirt with a yellow-gold designs on it?

A. Never been in my house.

Q. Does he wear a straw-hat?

A. Never.

Q. Does he have any kind of a hat?

A. Bareheaded. He ain't got a hat he owns in my house.

144 Q. When you saw your son at Kilby on Wednesday, did you ask him if he was guilty of all these offenses?

A. Yes, sir.

Q. What did he say?

A. When I asked him, I said, "son, did you do it?"

The Solicitor: I object to that.

The Court: Objection sustained.

Mr. McGee: I would like to except to that. She already started in answering without any objection on the part of the Solicitor.

The Court: The objection is sustained.

Mr. McGee: I would like an exception.

The Court: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

Cross examination.

By the Assistant Solicitor:

Q. You say your name is Carnella?

A. Carnella Reeves.

Q. You say you remember this day of Monday, July the 28th?
A. 28th?
Q. This last summer.
A. Yes, sir.
Q. You went to work at eight o'clock in the morning?
A. Yes, sir.
Q. And got home about four o'clock in the afternoon of the same day?
A. Yes, sir.
Q. You don't know where Jeremiah was from eight o'clock in the morning to four o'clock in the afternoon, do you?
A. I don't.
Q. Do you recall whether it rained on that day?
A. I don't recall any rain on that day.
Q. Would you say it was a fair day or a cloudy day?
A. I don't recall any rain on that day at all.
Q. Let us take the Monday before that, Monday, July the 21st. Did you go to work about the same time?
A. About the same time.
Q. What did your son wear on Monday, July 21st?
145 A. I don't keep track of what he would wear every day.
Q. What did he wear on Monday, July 14th?
A. I don't know. I only told you what he had on that day when I came home. What he wore every day I couldn't tell you.
Q. Don't know about any other day?
A. I don't know about any other day. I don't know, I didn't notice exactly what he wore right then not until now.
Q. What did he wear on Monday, August the 4th?
A. I don't have any idea what he had on.
Q. What did he wear on Monday, August the 11th?
A. I didn't keep in touch with that.
Q. You tell us you don't know any other but this one particular Monday. How do you know what he wore that Monday?
A. I can tell you that he put on blue jeans that day that was give to him. That is all I know.
Q. How do you know he put on blue jeans that day that were given to him?
A. Because he didn't have no other blue jeans to wear but those.
Q. How do you know they were the blue jeans?
A. They was too big, because they was give to him.
Q. Didn't you tell the Court he was wearing brown pants when you came back from work?
A. Wearing a brown shirt and blue jeans. He didn't wear any brown pants. A brown shirt and blue jeans.
Q. Tell me what he wore last Monday.

The ASSISTANT SOLICITOR: He would be in jail at that time. I withdraw that question.

By the ASSISTANT SOLICITOR:

Q. Tell me what he wore Wednesday three weeks ago?
A. Is that the day they picked him up?
Q. Tell me what he wore Wednesday three weeks ago.
A. I couldn't tell you what he wore then.
Q. Yet you can tell me what he wore on Monday, July the 28th?
A. Yes, sir, because when I left on Wednesday three weeks ago he was in bed.
Q. You testified in your opinion your son is insane?
A. Yes, sir, in my opinion.
Q. How long have you known of it?
A. I have knowed it since he has been growed as a boy, a way back there around four or five I have knowed of that.
146 Q. From about four or five?
A. Because he don't act like the others act.
Q. Have you ever taken him to a doctor, asked a doctor whether he was insane, or not.
A. I have not.
Q. Did you ever try to have him committed to an institution for the insane?
A. I did not.
Q. Have you ever talked to anybody else about him being insane?
A. Several neighbors around there got angry with him.
Q. That was your excuse to them?
A. That is what I would tell them.
Q. Do you recall a few days ago a worker from the Welfare Department came and talked to you about Jeremiah?
A. That is right.
Q. She was seeking information in connection with this boy?
A. That is right.
Q. Did you tell that case worker you thought he was insane?
A. Told her the same thing I am telling now.
Q. Told her what?
A. I told her the way he laughed, the way he went on. I am telling you the same thing I told her.
Q. Did you tell her that he — a little brother and sister?
A. No, sir; I didn't. She didn't ask me that. She was asking about him.
Q. Did you tell her he was an obedient lad?
A. That is right.
Q. Did you tell her that you had always taken him to Sunday School and Church?
A. Still take him to Sunday School and Church and BTU. I got proof.
Q. You remember you told her he was insane?
A. Yes, sir. And even told her about the fall he had on his head.

Q. You base your opinion he is insane on the fact he talks to himself and puts his hands behind his back?
A. I do.

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147 J. T. THOMAS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. You are J. T. Thomas?
A. Yes, sir, I am.
Q. What is your occupation?
A. Minister and cook.
Q. Cook and also a minister?
A. Yes, sir.
Q. What is your denomination?
A. Baptist.
Q. Do you know the defendant here?
A. Yes, sir; I know him well.
Q. How long have you known him?
A. I met him in 1947.
Q. Known him since 1947?
A. That is right.
Q. Does he go to your church?
A. He has been first a member of Shiloh Baptist Church, and Rev. Smart, a friend of mine, is pastor there; a choire member at the present time at my church. I am pastor of the First Baptist Church Congregation, Washington Park.
Q. Are you acquainted with him in the community?
A. I don't live in the community, but I am acquainted with many around the community.
Q. When I speak of community, I refer to Montgomery County.
A. I have seen him several places, at the athletic field of Carver High School. I am interested in young people playing football. This was just practicing. My boy is on the team. He was on the practice field with them.
Q. Are you acquainted with the defendant's general reputation?
A. Yes, sir, very much so.
Q. In your opinion, is his general reputation good or bad?
A. It is as good as anybody, I guess.
Q. Have you had an opportunity to observe him pretty constantly since you have known him?
A. Not too much, except once at the home of my mother-in-law.

148 The SOLICITOR: I object to that.

The COURT: What is the purpose of this question?

Mr. McGEE: I was going to ask him if he had observed any peculiar acts and traits, and ask him if he had any opinion about the defendant's insanity.

The SOLICITOR: I withdraw my objection.

The COURT: Go right ahead.

By Mr. McGEE:

Q. You have known him since 1947?

A. That is right.

Q. About what part of 1947?

A. It was in the spring.

Q. You testified he sings as a choire member of the Baptist Church, he sings at your church?

A. Yes, sir.

Q. And you have seen him play football with your son?

A. Yes, sir. We call him "Tender" for a nickname all the time. We tease him that way.

Q. Did you ever see anything that was peculiar?

A. Nothing peculiar, only one instant happened one time at my mother-in-law's home. I don't remember when it was. He was there with us. Her boys, of course, were some playful before ate dinner. The first thing I knew Jeremiah was standing at the back door crying and I asked him, "what is the trouble?" He didn't say anything. My mother-in-law said—

The SOLICITOR: I object.

The COURT: Objection sustained. Testify to what you saw and heard, not what somebody said.

The WITNESS: I got to tell what was said.

The COURT: You won't be able to testify. I will sustain the Solicitor's objection.

By Mr. McGEE:

Q. What did he then say?

A. When she asked him—

The SOLICITOR: I object.

The COURT: I will let him testify that he asked him what the trouble was and give the reply. Overrule the objection.

By the COURT:

Q. What was his reply when you asked him what the trouble was?

149 A. He said his arm, some of the boys twisted it, and he ran up on the porch crying, and he got mad. She said, "you know

how young boys do things. You don't have to cry about it." That is the only instance I noticed any abnormality.

By Mr. McGee:

Q. Did you see anything else that particular day?
A. No, sir. That is all. He was just a kid.
Q. Do you think a normal person would have acted like that?

The Solicitor: I object.
The Court: Objection sustained. At this time he hasn't qualified to give an opinion of what a normal person would do. He is not testifying as an expert.
Mr. McGee: I would like an exception.
The Court: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By Mr. McGee:

Q. Do you think he appeared to be insane or sane?

The Solicitor: I object. The question is whether he was sane or insane when this offense was committed, not at that time.
The Court: Sustain the objection.
Mr. McGee: I would like an exception.
The Court: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By Mr. McGee:

Q. When was this?
A. This incident, I believe must have been—I am not sure when it was, but since I got back from the service. I know that. I was discharged from service in January of 1947. It was since I returned from service this instance was.
Q. In 1949 or 1950?
A. Before 1950. Could be 1948, 1949.

The Solicitor: I object to this testimony.

By Mr. McGee:

Q. Did he appear at that time to be insane or sane?

The Solicitor: I object.
The Court: Unless you show a continued condition.
150 Mr. McGee: I have other witnesses here who will.
The Solicitor: I withdraw the objection.

The COURT: If you don't want to ask it, say so. If you are going to ask the question, go ahead, as to what his opinion is now.

Mr. McGEE: That is what the question is. The question is whether he was insane or sane now.

The COURT: Restate your question.

Mr. McGEE: Was he at that time insane or sane.

By the COURT:

Q. At that time were you of the opinion this defendant was sane or insane?

A. Insane, because I don't think any normal person would make such a statement and say he was mad.

151 CROSS-EXAMINATION.

By the ASSISTANT SOLICITOR:

Q. How long do you say you have known this defendant?

A. Since 1947.

Q. You saw something wrong four or five years ago? In your best judgment, when did you first see something that possibly was not right?

A. I said 1948, which would be about four years.

Q. About four years ago?

A. Yes, sir.

Q. Do you know how old he is now?

A. I think that the paper states he was seventeen.

Q. How old would you say he was on the occasion you have testified about?

A. Thirteen, I would say.

Q. You tell this Court in your best judgment you believe this boy is insane?

A. That is right.

Q. And you base that on just one thing, you say he was crying on this occasion you testified about when he was thirteen years old?

A. The statement he made of why he cried.

Q. The statement he made you testified to?

A. Yes, sir.

Q. He is still insane; you base your opinion on that he is insane?

A. That is right.

Q. Did you tell anybody else you thought he was insane?

A. I do know I did.

152 Q. Don't you know insane people need to be confined in an asylum or mental institution?

A. I do.

Q. Do you think he belongs in a mental institution?

A. I do if he conducts himself in that manner since that time.

Q. Based on what you saw him do, crying on this occasion when he was thirteen, you think he belongs in a State mental institution?

A. If his general conduct was such since that time, I think he should.

Q. Based on what you tell the Court you saw him do, do you think he belonged in a State mental institution?

A. Yes, sir.

Q. Did you take any steps to see that he got there?

A. No, sir; I did not.

Q. You testified he has a general good character?

A. Yes, sir.

Q. Has anyone ever told you he is on parole from the juvenile court of this county?

Mr. McGee: That is objected to on the ground it would be hearsay.

The Court: Ask him if he knows.

Mr. McGee: I would like an exception.

The Court: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By the Assistant Solicitor:

Q. The Court says you may answer.

A. I don't know that.

Q. You don't know that?

A. No.

Q. If that were true and you had known that would you testify he was a person of good character, his general reputation was a person of good character?

A. I can only testify to what I know.

Q. Would that make any difference now if it were true in your testimony?

A. I don't know that. I can only testify as to what I know. I cannot answer to something that never happened.

Q. If it is true.

153 A. No one could tell about that until it happens. I cannot tell what I would say about him unless it happens.

Q. You testified you have seen this boy in his off hours with your children playing football.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Your children play football with him frequently, do they?

A. It has been pretty frequent out on the practice field.

Q. During the last few years?

A. No, sir. Just the last two years.

Q. You let your children associate with him in group play, did you?

A. They were at school.

Q. You had no objection to your children associating with a boy you considered insane?

A. They were at school. I didn't say he was insane. I said at the present time the way he conducted himself at that particular time.

Q. Now you say he isn't insane.

A. I don't say that. My opinion is just like it was. I said nothing about now.

Q. What is your opinion now, is he insane or sane?

A. I told you what his conduct was, his behavior at that particular time—I would judge him as an insane person, but I couldn't say now. Now, we are talking about the football field. I said at that particular time, because that is what was asked me by lawyer McGee. He asked me about that particular time.

Q. You said he was insane back at that time in your best judgment; is that right?

A. That is right.

Q. Have you seen anything else to make you say he is now insane?

A. The way he sang in the choire, I said, and still does.

Q. That makes him insane?

A. He is not singing now. He sings the songs bad. And it is a very good choire there at the Shiloh Baptist Church.

Q. Tell us what your judgment is, whether he is insane or sane now.

A. At times his singing would be bad.

RE-DIRECT EXAMINATION.

154 By Mr. McGEE:

Q. The boy couldn't sing, is that what you mean?

A. Yes, sir.

JERRY REEVES, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. Your name is Jerry Reeves?

A. That is right.

Q. You live in Montgomery?

A. Yes, sir.

Q. Do you know this boy here?
A. That is my boy.
Q. How old is he?
A. Seventeen.
Q. When was he seventeen?
A. August 8th.
Q. This year?
A. That is right.
Q. Is he in school now?
A. He go up and practice with the boys in the band all the time.
Q. Does he go to school?
A. He goes a pretty good bit.
Q. Is he enrolled as a member of that school?
A. He ain't enrolled. He goes up there every day.
Q. Was he enrolled for part of a term?
A. I don't know about that.
Q. What grade?
A. Eighth grade.
Q. When did he quit as a regularly enrolled pupil at the school?
A. I think last year; I believe it was.
Q. Do you remember when they first picked him up this month?
A. Yes, sir, on the 10th.
Q. What day was that?
A. Monday.
Q. Were you at work and away from home that Monday?
A. I working.
155 Q. Did you go home any time on this Monday?
A. Yes, sir.
Q. About what time?
A. 3:20.
Q. Was you there when your wife got there?
A. Yes.
Q. Did you see any policemen?
A. The house was full.
Q. Who did you talk to when you got home?
A. Mr. Armstrong.

The SOLICITOR: I object to any conversation.

The COURT: Objection overruled. I will let him testify what he said to him.

The WITNESS: I came in and he said he wanted to get his belongings, what belonged to Junior, and had two cigar boxes belong to him, and give them to him. So he said I couldn't see him.

By Mr. McGEE:

Q. Did he tell you where boy was?
A. Camp Kilby. I couldn't see him. I asked him why. He said

he was the nigger committed them crimes, he would let me know when he got some instructions from there. He said he committed all them crimes, rape, and everything else. He said I couldn't see him now.

The SOLICITOR: This conversation with Mr. Armstrong isn't admissible.

The COURT: Objection sustained.

By Mr. McGEE:

Q. When did you see your boy next?
A. About three days afterwards.
Q. What day did you see him?
A. I think on Thursday I think it was.
Q. Did you go out to Kilby?
A. Yes, sir. I went to Camp Kilby around 1:15 and asked Mr. Dees could I see him. The man at the door said, "you got to see Mr. Dees, you better wait awhile and maybe you can see him. I think he is questioning him." And I waited about twenty minutes afterwards and they taken me upstairs where the electric chair was, so they say. I don't know where it was. I couldn't observe it through the bars.

(No Cross-examination.)

156 MARY JORDAN, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. Your name is Mary Jordan?
A. That is right.
Q. Do you know the defendant here?
A. Yes, I certainly do.
Q. What is his name?
A. His name Jeremiah Reeves.
Q. How long have you known him?
A. Been knowing Jeremiah Reeves ever since he was a small boy.
Q. Did you see him frequently, or not?
A. Well, I didn't live so far from him. When he lived on Hilliard Street he go by on Hilliard Street. And I got acquainted with him at the Shiloh Baptist Church.
Q. You all go to the same church?
A. We don't belong to the same church, but I visit that church. That is when I became acquainted with him.
Q. How old was he when you started knowing him?

A. Well, when I first knowed him he was quite small, and I have been knowing him right around sixteen years, Jeremiah Reeves.

Q. He was just a young baby when you first knew him?

A. That is right.

Q. Saw him in the community?

A. Saw him in the community.

Q. Have you seen him off and on ever since that time?

A. Sometimes I see him going to school and places, and sometimes I see him passing my house.

Q. Talked to him and everything?

A. Sometimes talk to him, I speak to him; sometimes he speak and sometimes he wouldn't say anything.

Q. Did you ever observe him doing anything peculiar, or abnormal, or anything?

A. I don't accuse him of doing anything abnormal like that; just kind of acting mean and all, like he was insane, or something or other.

Q. What made you think so, in what way?

A. Sometimes he would never talk sometimes, and again he
157 would talk to me. I would speak to him, sometimes he wouldn't speak to me.

Q. Sometimes when you spoke to him he wouldn't answer at all?

A. That is right. And sort of mean.

Q. Did you discuss anything else?

A. Well, see him turn and stop, and go head on wherever he was going sometimes.

Q. Did you ever visit in his home?

A. I never has visited in the home, but I always have known about it, known it.

Q. Do you know his general reputation out there where he lives?

The ASSISTANT SOLICITOR: We object to that. General reputation as to what?

The COURT: Objection overruled.

By Mr. McGEE:

Q. Do you know his general reputation in the community in which he lives?

A. I don't know where he stays at, where he live on Gravel Pit. I wasn't out there.

Q. When did they move?

A. Moved, I think, around about two years ago, I think they moved out there.

Q. That is in Montgomery?

A. That is in Montgomery.

Q. I don't mean the county is; I mean the community in and

PLEASE THROUGH POOR COPY

around Montgomery. Do you know his general reputation in and around Montgomery?

A. Oh, well, as far as I know about him around Montgomery here.

Q. You do?

A. I certainly do.

Q. Is it good or bad before this accusation?

A. That is right. I never heard him do anything.

Q. Is it good or bad?

A. It was good, whatever he was trying to do. That is as far as I know about him.

CROSS-EXAMINATION.

By the ASSISTANT SOLICITOR:

Q. Is it your opinion this boy is insane?

A. That is my opinion.

158 Q. That is what you tell all these gentlemen right here?

A. That he is insane.

Q. The reason you tell us he is insane is because sometimes he talks and sometimes he doesn't talk, and doesn't always answer you when you speak to him?

A. That is right.

Q. That is the reason you say he is insane?

A. He is insane. I said that.

Q. How long have you known that he was insane?

A. Well, he growed up, you know, to be a big size boy. I knowed him from a child. I mean he got twisted a little bit.

Q. Tell me how long in years, since he was a little boy?

A. After he growed up so he was a school boy, big enough to school, he began to kind of act like he was insane to me.

Q. Insane people belong in a State hospital, don't they?

A. In a hospital?

Q. In a mental hospital or asylum.

A. Oh, yes, sir, that is right.

Q. You think he belongs in an asylum, do you?

A. If he is insane. That is what he is supposed to be.

Q. Have you ever taken any steps to have him put in an asylum?

A. I certainly have not.

Q. Do you know of anybody else who has?

A. You know, he wasn't any relation to me at all.

RE-DIRECT EXAMINATION.

By Mr. MCGEE:

Q. If you had a boy who wasn't quite right mentally would you have him locked up or keep him home?

The ASSISTANT SOLICITOR: We object to that.
The COURT: Objection sustained.

By Mr. McGEE:

Q. Do you think somebody should be locked up in a mental institution if the parents want to take care of them?

The ASSISTANT SOLICITOR: We object.

By Mr. McGEE:

Q. If the parents are taking care of them?

The ASSISTANT SOLICITOR: We still object.

The COURT: We are getting into a lot of side issues. I will let her testify and stop without any more side issues.

159 By Mr. McGEE:

Q. Do you think if the parents are taking care of them at home they should be locked up in an institution?
A. Usually if they could take care of them, if they could do that, I think it would be fine if they could do that. That is what I think about it.

FRANCES HALL, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. What is your name?
A. Frances Hall.
Q. How long have you lived here in Montgomery?
A. All my life.
Q. Work here?
A. Yes, sir; I work.
Q. Do you know the defendant here, this boy?
A. Been knowing him all his life.
Q. And do you live anywhere close to him?
A. He was born right back of where I lived. I don't live close to him now. He lived to close where I lived until about four years ago.
Q. You say he was born right back of where you live at?
A. He was born right back of where I live at.
Q. That is here in Montgomery?
A. That is here in Montgomery.
Q. Do you know where he lives now?

A. He lives in the Gravel Pit.

Q. Did you ever visit him or did he ever visit you?
A. Quite often go to church club meeting.
Q. Do you all belong to the same church?
A. No, sir. I doesn't belong to their church, but our church club cooperated with their church club.
Q. You have been pretty close, in pretty close contact with Jerry all his life?
A. His grandmother lived the second house from me. He mostly was at his grandmother's house every day until she moved about two years ago.
160 Q. And I guess you know his general reputation in this community around there?
A. He has been a good boy to my knowings. He has been in my house playing with the children——

The SOLICITOR: I object.

By Mr. McGEE:

Q. Did you have an opportunity over the years as long as he was there to observe his conduct and observe how he behaved?
A. As I say before, I——

The SOLICITOR: I object.
The COURT: Is your ground he was insane?
Mr. McGEE: I want to ask about anything peculiar. She started to answer before I finished my question.
The SOLICITOR: I will withdraw the objection.

By Mr. McGEE:

Q. Did you observe him behave or conduct himself in a peculiar manner?
A. Run around, always appeared to me he didn't have good sense.
Q. In what way?
A. He always talked to himself, and sang, and read, and seemed to be upset at times, or laughing a lot, and held his head in his lap, and some of the time he grabbed his head and go to running in a circle, and cried sometimes until he started laughing.
Q. You have seen him talk to himself and laugh and seen him burst out crying?
A. Crying. He would just cry and then start laughing, and act like somebody preaching, and all.
Q. Suddenly burst out and sing?
A. Dirty songs. And he would sing loud, sing out with some kind of a roar, or something like that.
Q. And holds his head a lot—what do you mean by that?

A. Grabs his head and knees like that. (Indicating)

Q. Like that holding his head?

A. Yes, sir.

Q. How long have you seen him, how long has he been behaving himself that way?

A. Been doing that all his life since——

Q. Has he always acted all right?

A. He acted all right sometimes. He acted sometimes all
161 right, and most of the time he didn't act like himself.

Q. Do you know how old he is now?

A. Seventeen.

Q. In your opinion then, from observations you made of him would you say Jerry is sane or insane?

A. Insane. We always thought that he was insane, he acted like a person insane.

CROSS-EXAMINATION.

By the Assistant SOLICITOR:

Q. You know he went to school, don't you?

A. Yes, sir.

Q. He went through the 8th grade, didn't he?

A. Yes, sir.

Q. As far as you know did he then do all right?

A. I don't know how he did in school. I don't know why you ask me a question like that.

Q. You know he sings in the choire at church, don't you?

A. Yes, sir, he sings in the choire.

Q. Nothing unusual about singing in the church choire?

A. He don't sing songs right in church.

Q. They didn't make him stop?

A. They stopped him once, and everybody knowed he did this, but didn't bother about it.

Q. He plays in a dance band?

A. He plays in a band, he beats the drums.

Q. How long has he been playing in a band?

A. Why, I don't know when he started beating the drum. I know he beats the drum.

Q. He gets paid for that, don't he?

A. I don't know. I guess they pay him.

Q. What kind of a band does he play with?

A. It is the school band, Booker Washintgon school band. I know he has been away with an orchestra some, and came home about three or four weeks ago.

Q. About how many times have you seen Jeremiah in the last six months?

A. I don't know how many times. Sometimes I see him every day.

Q. You have been seeing him pretty often in the last six months?

A. I have been seeing him quite a lot. Sometimes he stop
162 and talk to me.

Q. He stops in sometimes every day?

A. Not every day he come in. He come by every day.

REDIRECT EXAMINATION.

By Mr. McGEE:

Q. The fact someone goes to school doesn't indicate whether they are insane or sane?

The Assistant SOLICITOR: Of course, we object to that.

The COURT: Objection sustained.

Mr. McGEE: I would like an exception.

The COURT: You may have an exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

ELIZABETH ALFORD, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. Speak up so everybody on the Jury can hear you. What is your name?

A. Elizabeth Alford.

Q. You live in Montgomery?

A. Yes, sir.

Q. How long have you been here?

A. Been here about eight years.

Q. Do you know the defendant, Jerry Reeves?

A. Know him five years.

Q. Where do you live now?

A. I live 35 Gravel Pit.

Q. Is that out in his neighborhood?

A. Joining rooms to them.

Q. In other words, you all live in the same house?

A. Yes, sir.

Q. How long have you been living out there by him?

A. A year.

Q. Living out there by him a year?

163 A. Yes, sir.

Q. Know him five years?

A. Yes, sir.

Q. Where did you live before you went there?

A. Lived on Clarmont Street.

Q. Is that close to Gravel Pit?

A. Yes, sir, Gravel Pit just down below.

Q. Do you go to the same church?

A. Yes, sir. I always visit his mother's church.

Q. Did you see him at the same church with his mother?

A. Yes, sir.

Q. In the five years did you have a chance to see him fairly frequently?

A. Yes, sir. I have often seen him.

Q. Have seen him quite a bit?

A. Yes, sir.

Q. Did you have a chance to observe whether he acted peculiar, or behave in a way that was not normal?

A. He always did act peculiar around me, because I was——

Q. In what way?

A. Sometimes he came out and sat down by the side of my house and just gazed and looked that way like his mind completely gone.

(Indicating)

Q. Sat there looking up?

A. Yes, sir.

Q. How many occasions have you seen that?

A. I didn't count the minutes, but I watched him for a long time. Came out and looked up that way. (Indicating) I saw him do that many a time. Frequently when I was in his home he jumped up, grabbed the back of his head and ran right on out. Probably sometimes he turned around and went out the front door, and sometimes he went out the back door.

Q. Did you ever see anything else he might have done?

A. Sometimes he cries. I didn't know what he was crying about. He just was a fool, I guess.

Q. Where have you seen him cry?

A. At Home.

Q. Be in the room?

A. Sitting down there talking and all of a sudden he would
164 burst into tears. And sometimes I wouldn't be saying anything to him and he would start crying. I didn't know what he would be crying for.

Q. How was he crying, loud or low?

A. It was fairly loud at times—people heard the noise.

Q. Do you know his general reputation where he lives in the community there?

A. Yes, sir.

Q. Would you say it is good or bad?
A. It is good.
Q. Based on your observing him crying and sitting for a long time that way staring into space, would you consider him sane or insane?
A. Insane.
Q. Consider him sane or insane?
A. Insane.

(No Cross-examination.)

5:55 O'clock P. M.

Adjourned Until 7:15 O'clock P. M.

(The Jury retired from the Courtroom in charge of the bailiff.)

7:15 O'clock P. M.

Present:

The COURT.
The JURY.
The SOLICITOR and ASSISTANT SOLICITOR.
The defendant, and his counsel.

(Defendant's Evidence) (Continued).

FANNIE MITCHELL, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. Your name is Fannie Mitchell?
A. Rebecca Mitchell.
Q. Do you live here in Montgomery?
165 A. Yes, sir.
Q. How long have you lived here in Montgomery?
A. All of my life.
Q. All of your life?
A. Yes, sir.
Q. Do you know the defendant here, this boy here?
A. Yes, sir.
Q. How long have you known him?
A. Five years.
Q. Where do you live?
A. 15 Gravel Pit.
Q. Where is that?
A. Out there near the T. B. Sanitarium.
Q. Way back over in North Montgomery?

A. Yes, sir.
Q. Is that anywhere close to where——
A. Right next door to him.
Q. Is that in the same house or the house next door?
A. House next door.
Q. How long have you lived out there?
A. Five years.
Q. You have lived out there five years?
A. Yes, sir.
Q. In other words, you have known him ever since you have lived out there?
A. That is right.
Q. Do you remember back to the date of July 28th of this year?
A. Yes, sir.
Q. On a Monday?
A. Yes, sir.
Q. On that particular day did you at any time see this defendant?
A. I certainly did. He was around all that day.
Q. What time?
A. Well, from 11 o'clock until 4 o'clock.
Q. From 11 o'clock until 4 o'clock?
A. Yes.
Q. Where was he from 11 to 4?
A. At my house. We were playing dominoes. He wasn't playing, but he was there with us.
166 Q. You say he was playing dominoes in your house on July 28th of this year?
A. Yes, sir.
Q. From 11 o'clock to 4 o'clock at night or what?
A. Yes, sir.
Q. From 11 o'colck to 4 o'clock at night or what?
A. Day.
Q. In the morning?
A. That is right.
Q. 11 o'clock in the morning until 4 o'clock in the afternoon?
A. Yes, sir.
Q. Are you positive?
A. Yes, sir.
Q. And that is next door to where he lives?
A. Yes, sir.
Q. You live way out here near the Fresh Air Camp, they call it?
A. That is right.
Q. In the five years you have known him do you know his general reputation in the community?
A. Yes.
Q. Is it good or bad?

A. It is good.
Q. It is good?
A. Yes.
Q. Have you some children in your home?
A. Yes.
Q. Who was you playing checkers with?
A. My next door neighbor, and me, and a girl friend from town.
Q. What next door neighbor, some other next door neighbor?
A. Yes.
Q. Who is that?
A. Willie Mae Bates.
Q. Anybody else there?
A. Well, me and the children and him.
Q. You and the children?
A. Yes.
Q. How many children have you?
A. Four.
Q. Are they small?
167 A. Yes, sir.

CROSS-EXAMINATION.

By the SOLICITOR:

Q. What day of the week was that?
A. On the 28th.
Q. What day of the week?
A. Monday.
Q. Did you see him the Monday before that?
A. Yes, sir. I have seen him every day during the week.
Q. You have seen him every day during the week?
A. Every day during the week.
Q. Did he play dominoes with you the Monday before?
A. Well, if there was anybody to play, he would always.
Q. Do you know about that day at all?
A. He would stop awhile and talk, and sit there talking. That is every day he was around there.
Q. How was he dressed that day?
A. Well, he just had on his blue jeans and a shirt. That is all.
Q. Polo shirt?
A. Yes, sir.
Q. What color shirt?
A. White color shirt.
Q. White shirt?
A. Yes, sir.
Q. Did he play dominoes over there every day that week?
A. Yes, sir.

Q. Every day that week?
A. Every day.
Q. Did he play dominoes every day the next week?
A. Sometimes he didn't play every day, but he played sometimes.
Q. How many days during the next week did he play dominoes over there?
A. When we could get up a game.
Q. Did he play dominoes over there the next Monday?
A. Yes, sir.
Q. Did he play Tuesday?
A. No, sir, he didn't play Tuesday.
Q. Did he play Wednesday?
A. Yes, sir, he played Wednesday.
168 Q. Did he play Thursday?
A. No, sir, he didn't play.
Q. Did he play Friday?
A. No, sir.
Q. Did he play Saturday?
A. No, sir.
Q. Did he play Sunday?
A. No, sir, he didn't play Sunday.
Q. July, I am talking about, the week of July the 28th. That would be in August. During the first week of August did he play Monday?
A. Yes, sir.
Q. Play Tuesday?
A. Yes, sir.
Q. Play Wednesday?
A. No, sir.
Q. Play Thursday?
A. No, sir.
Q. Play Friday?
A. No, sir.
Q. Play Saturday?
A. No, sir.
Q. Play Sunday?
A. No, sir, he didn't play Sunday.
Q. How about the next week, the second week of August? Did he play dominoes at your house that week?
A. No, sir, didn't play that week.
Q. Didn't play at all that week?
A. He played on Friday.
Q. How do you know that week he didn't play?
A. Well, because every day during that time I wasn't washing or nothing he was around home he would play when I asked him.
Q. In other words, he played all the time you were not washing, he played dominoes with you?

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A. Yes, sir. And he was around there holding my baby.
Q. The second week of August you were washing?
A. I wash every day.
Q. How was he dressed, on Wednesday, the second week of August?
A. In blue jeans and an old cotton shirt on.
169 Q. How was he dressed Wednesday the second week?
A. Well, he had on a shirt and blue jeans-pants.
Q. Have you ever seen him in other clothes besides that?
A. No more than Sunday he was dressed up going to church.
Q. Ever see him in these blue pants there? (Indicating)
A. Yes, sir; I have seen him in those a lot.
Q. That is when he was going to church?
A. He was going to church.
Q. Ever saw him in those clothes other than when he was going to church?
A. When we went out and went to a dance. And, of course, he kept them pants nice when he needed them to do something.
Q. Did he take you to the dance?
A. No, sir, he didn't take me, he just went along.
Q. Just went along with you?
A. Yes, sir.
Q. He hung around your house quite a bit?
A. He wasn't there all the time.
Q. Are you his girlfriend?
A. No, sir; I am not his girlfriend. Well, he is seventeen and I am eighteen.
Q. Let us go back to the first week in June. Did you play dominoes with him during that week?
A. Well, some.
Q. Do you know whether you played dominoes with him on Monday, the first week of June?
A. No, sir; I don't remember that.
Q. What about Tuesday?
A. Well, we played about twelve on Tuesday.
Q. What time did you start playing on Tuesday? This is the first week of June.
A. Yes, sir.
Q. What time did you start playing?
A. About twelve, and played until about four.
Q. What time did you quit?
A. Played until about four o'clock.
Q. He played dominoes with you that day?
A. He sure did.
Q. How was he dressed that day?
170 A. He had on the same shirt and pants.

Q. That is Tuesday, the first week of June?
A. That is right.
Q. Do you know what date that was?
A. No, sir; I don't remember what date.
Q. How is it you know the 28th day of July and don't know the date of Tuesday, the first week of June?
A. We was looking at some names, and we all agreed they had the wrong party, so we got a calendar and started looking to find out.
Q. You tell me you played dominoes with him Tuesday, the first week of June?
A. Yes, sir.
Q. You tell me you played Wednesday, the second week in August, with him?
A. Yes, sir.
Q. What date was that?
A. Well, I don't know what date.
Q. Do you remember what time you started that morning?
A. We would start around twelve, because that is the time I get through doing my washing.
Q. Played dominoes with you every day?
A. Yes, sir, plays dominoes over there every day.
Q. Every day?
A. Yes, sir.
Q. Hasn't missed a day in a year?
A. Not since I have been living around there. In fact, since I have been living there he is around his house and my house, as far as I could see. He just acted like he wanted to stay home or something or other. He just didn't never act right.
Q. He played dominoes at your house on the 10th of November?
A. Well, let me see where we were on the 10th. He was there, but didn't play dominoes.
Q. He was there with you, but didn't play dominoes?
A. Yes, sir. Watched the children then.
Q. What time did he come over there that day?
A. He came over that morning, and he went back home and came back again.
Q. What time did he get there that morning?
A. He got there when he got up. I reckon about eight o'clock, or something.
171 Q. How long did he stay over there?
A. He stayed quite awhile.
Q. Did he stay until twelve or one o'clock?
A. No, sir. He went back home.
Q. Give the time.
A. About nine o'clock, I say.
Q. What time did he come back again?

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A. Came back over about one.

Q. How long did he stay there?

A. He sat around until his mother came in, because I remember she called him during that time.

Q. That is on the 10th of November?

A. Yes.

Q. Do you know what day that was?

A. No, sir; I sure don't. I don't know exactly what day it was.

Q. You remember everything that took place on the 10th of November; is that what you are telling us?

A. Yes, sir.

Q. Don't you know he was arrested and taken to Kilby Penitentiary about 2 o'clock on November the 10th?

A. November 10th?

Q. November 10th. That is what I said.

A. He was around there.

Q. He was arrested and taken to Kilby Penitentiary at 2 o'clock on November the 10th.

A. I think he was around there.

Q. Who have you talked to about this case?

A. I haven't talked to nobody about it.

Q. Haven't mentioned it to anybody?

A. No, sir.

Q. Haven't talked to any lawyer about it?

A. No, sir. I haven't even seen a lawyer.

Q. They didn't know what you were going to say when you got up here?

A. No, sir. When he came after me I was doing washing.

Q. Your testimony about November 10th is just as true as anything else you have said?

A. As far as I know. They have it mixed up. As far as I know it was.

172-173 Q. Could you tell us what you had for dinner on July 28th?

A. July 28th?

Q. That is right.

A. I think probably I could. July 28th we had turnip greens and corn bread and milk for dinner.

Q. Did you feed him on November 10th?

A. I didn't feed him November 10th.

Q. You tell us he came at 1 o'clock and stayed until his mother called him on November 10th; that is what you testified to, wasn't it?

A. I must have meant July the 28th.

RE-DIRECT EXAMINATION.

By Mr. McGEE:

Q. Are you positive it was Monday, July 28th, when he stayed with you?
A. Yes, sir; I am positive of that.
Q. You said at that time he was dressed in a pair of blue jeans.
A. Yes, sir. I do remember that.
Q. And that is out at what place?
A. Out at the Gravel Pit.
Q. What address?
A. Route three.
Q. It didn't have a house number?
A. 15.
Q. 15 Gravel Pit?
A. Yes, sir.

174 ELIZABETH ALFORD, recalled.

The SOLICITOR: I am going to object to anymore direct examination.

The COURT: You may only examine a witness once on direct.

Mr. McGEE: This is entirely new evidence.

The COURT: Of course, there has been nothing to rebut. You can hold her until the State is through and call her back in rebuttal. We cannot call back witnesses once they have testified and go into something entirely new.

Mr. McGEE: I have several defenses in this case and I was trying to offer witnesses who will corroborate each point.

The COURT: You must examine them in full.

Mr. McGEE: I would like an exception.

The COURT: You may have an exception.

(Exception noted for the defendant by direction of the Court.)

The COURT: I will let you call this one witness, but no other, if you are under a misapprehension of the rule of procedure.

Mr. McGEE: The only thing I wanted to show was about this defendant's mustache and how long he had it, if she knew.

The COURT: I will let you call her back. You will have to fully examine them as to everything at one time. I think this is a discretionary matter with the Court. I will let her come back for the limited purpose of testifying to that.

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DIRECT EXAMINATION.

By Mr. McGEE:

175 Q. You have already testified how long you have known this defendant?
A. Yes, sir.
Q. You see the mustache the defendant is wearing?
A. Yes, sir. He didn't have it only about three years.

CROSS-EXAMINATION.

By the SOLICITOR:

Q. Have you ever known him to shave it off?
A. Not since he had it.

HARVEY BUTTS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. Your name is Harvey Butts?
A. Yes, sir.
Q. How long have you known the defendant?
A. Since 1946, about five or six years.
176 Q. You see the mustache he has got now?
A. Yes, sir.
Q. How long has he had it?
A. Pretty near between, somewheres in the neighborhood of two or three years, I remember.
Q. Two or three years you remember?
A. That is right.
Q. I don't know how many occasions you observed him, but I just wondered in the period you have known him you have noticed him behaving peculiarly or abnormally.
A. The onliest thing, I can tell you what he did. The onliest conversation, I tried to talk with him one time, and during that conversation—do you want to hear about it?
Q. What was it?
A. I was at church one Sunday. The church was having some kind of special service. I was standing out toward the back, and Jerry started to walk across to where I was with his daddy, and he said he hurt his foot, take him home, he couldn't walk. He walked across the church yard to where I was. I couldn't see what was going on out there and didn't pay any attention to what it was.

When he saw his daddy he started hopping and said he couldn't walk. I know he walked across to where I was. That is what attracted my attention. After he said he couldn't walk he said he got his foot hurt and wants his daddy to take him home. And shortly after that we were ready to go in church. Before I went in church he left there walking. I know that.

CROSS-EXAMINATION.

By the SOLICITOR:

Q. Do you see him every day?

A. No, sir.

Q. Every week?

A. I wouldn't say every week. I visit church up there and see him there in the church.

Q. You visit church up there?

A. Yes, sir.

Q. How often do you visit church up there?

A. I visit there nearly every Sunday. Sometimes I miss a Sunday.

Q. Sometimes you miss as much as a month, do you?

177 A. Well, when I first started I did. I went there about every other Sunday when I first started going there, and after that I go approximately every Sunday.

Q. If he was at church you saw him.

A. I would see him.

Q. How often did you see him?

A. I cannot say that. That is the onliest conversation I remember having with him. That is the onliest one I can remember, to tell the truth.

Q. What you are saying now is that you go to church almost every Sunday?

A. Yes, sir; I do now.

Q. If he was at church you might see him and might not?

A. I might have seen him and might not.

Q. How many years approximately did you say he had a mustache?

A. Three years.

Q. He could shave it off and grow it back and you wouldn't know it? He could have shaved it off and grown it back in two or three weeks and you wouldn't have noticed it.

A. Probably so. I don't know about that.

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JEREMIAH REEVES, JR., having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. Your name is Jeremiah Reeves, Jr.?
A. Jeremiah Reeves, Jr.
Q. You are the defendant in this case, are you not?
A. Yes, sir, that is right.
Q. How old are you?
A. Seventeen.
Q. When were you seventeen?
A. 8th of August, 1952.
Q. Do you remember this lady who testified this morning, Mrs. Crowder?
A. Yes, sir, I remember her.
Q. Do you remember seeing her down at Police Headquarters?
A. Yes, sir.
Q. Had you ever seen her before that time?
178 A. No, sir.
Q. The 28th day of July, Monday, this year, do you remember that?
A. Yes; I do.
Q. Remember that date?
A. Yes, sir.
Q. Did you go out to Mrs. Crowder's house on Cleveland Avenue that day?
A. No, sir, did not.
Q. Did you go out and go in her house and attack her?
A. No, sir, did not.
Q. Had you ever seen her before you saw her at Police Headquarters?
A. No, sir; I hadn't met her until they brought her down there.
Q. Do you remember when you were first arrested?
A. Yes, sir; I do.
Q. When was that?
A. It was in the summer.
Q. I am talking about this time.
A. I was arrested November 10th, 2:10 P.M.
Q. Arrested about 2:10 P.M. November 10th this year?
A. Yes, sir.
Q. That is on Monday?
A. Yes, sir, it was.
Q. Do you remember who arrested you?
A. Yes, sir; I do.

Q. Who was it?

A. Mr. W. M. Armstrong and Mr. Tally.

Q. Where did they pick you up, where was you when they arrested you?

A. I was on the corner of Union and Washington.

Q. What part of town is that in?

A. The Sou'h or West.

Q. Where from here?

A. It is over this way. (Indicating)

Q. Eastern part of town?

A. Yes, sir.

Q. What did they do when they arrested you?

A. They arrested me. First called me to the car.

Q. What were you doing when they called you to the car?

A. I was walking up the street going back to school.

179 Q. Over to the Booker Washington High School?

A. Yes, sir.

Q. They called you over to the car?

A. Yes, sir.

Q. What happened?

A. I was up the street a piece from him. He called me, "hey, boy, come here." So I came back to see what he wanted, just walked on back. I wanted to know what it was all about. So I got in the car, and then they started threatening me all the way going downtown—"you did this, you did that," all the way downtown to the County Jail.

Q. What did they say to you when bringing you downtown? You say the officers pulled up and stopped?

A. Yes, sir, they did.

Q. Go on and tell the Jury what it was.

A. They looked at me and said, "yes, sir, you are the damn nigger." I wanted to know what it was all about. And they started questioning and talking, and I was the man, and I didn't hardly say a word. They was saying, "yes, this is him." They brought me downtown to the County Jail.

Q. You say they started accusing you of things. Did they accuse you of things?

A. Yes, sir, they did.

Q. Tell the Jury what they said, tell everything they said you can remember.

A. Say, "you are the one did this, you are the one damn nigger, you are the one nigger messing with all the rest of the women around here in town."

Q. What did you say?

A. "I ain't the one." I said, "no, sir; I ain't the one." They told me, "you ain't the one?" They started threatening me, what they would do to me, and everything else.

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Q. What do you mean by started to threaten you? What did they say?

The SOLICITOR: I object to unnamed people.

Mr. McGEE: He is talking about Armstrong and Tally, the two Deputy Sheriffs of Montgomery County who arrested him.

The COURT: He has identified the arresting officers. That is what I am sure he is testifying about.

180 By Mr. McGEE:

Q. What kind of threats, what did they say?

A. Well, Mr. Tally told me, he said, "yes, sir, you are the damn nigger doing this around town all the time. Ain't you the one?" I said, "no; I am not the one." Looked at me and said, "you are look like the one." I told them I wasn't the one.

Q. What kind of threats did they make? You said they threatened you. Did they threaten you in any way?

A. Yes, sir.

Q. What did they say?

A. They said, "you might as well admit you did it. If you don't we will find out and you will get the electric chair." That is what they told me.

Q. What did they do with you when they got you to the County Jail?

A. They was talking to me and talking among themselves.

Q. How long was you in the County Jail?

A. Not more than about approximately five minutes.

Q. After you were there approximately five minutes then what happened?

A. They brought me out of the jail, two or three car loads of officers, carried me to Kilby Prison.

Q. Did they let you make any phone calls before they carried you to Kilby Prison?

A. No, sir, did not.

Q. Did they let you make any phone calls in Kilby?

A. No, sir. I asked them and they said nobody could see me and I couldn't call anybody.

Q. You asked if you could?

A. Yes, sir.

Q. And you couldn't?

A. No, sir.

Q. What time did you get to Kilby?

A. It was about three P. M., something like that.

Q. Did they question you about anything before they got you to Kilby?

A. Yes, sir, they did.

Q. At the County Prison anybody question you?

A. Yes, sir, by the newspapermen. One took a picture of me.

Q. One took a picture of you?

181 A. Yes, sir.

Q. Monday?

A. Yes, sir.

Q. Monday, the 10th?

A. Yes, sir.

Q. It was a newspaperman?

A. Yes, sir, it was.

Q. Any prison officials there?

A. Yes, sir.

Q. Who was they?

A. Mr. O. R. Dees.

Q. How long did they question you during Monday?

A. They questioned me constantly until dark, and I asked them to let me alone so I could go to sleep, and about the time I got to bed and went to sleep Mr. Dees came back and he taken me out of there and taken me in the room where the electric chair was.

Q. Where was that room located with respect to the cell where you were locked in?

A. Right next to it.

Q. He took you in the room where the electric chair was?

A. Yes, sir.

Q. What happened then?

A. We sat down and he told me, "the only thing that is going to keep you out of the electric chair, you are going to say you did it." I said, "Mr. Dees, I won't say I did it." He said, "the only way for you to keep out of the electric chair is for you to say you did it."

The SOLICITOR: The State has introduced no confession. He is giving evidence of some kind of confession. We have a confession but it has not been introduced. If he wants to introduce the confession, I will let the defendant introduce it.

The COURT: No confession has been introduced taken at Kilby Prison, in writing or otherwise.

Mr. MCGEE: The prosecutrix testified this defendant was held at Police Headquarters and she was carried down there, and while down there asked him why he did it while he was still being held in custody.

The COURT: That is not what happened at Kilby Prison. What he told her at Police Headquarters while being held in custody, the Court has already held that statement to be admissible or

182 being voluntary.

Mr. MCGEE: I would like to have an exception to the Court's remarks. The Court has already stated the defendant's remarks were made voluntarily.

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I would like to move for a mistrial because of the remark of the Court, about the statement of the defendant to her was voluntary. It is prejudicial, and the defendant cannot receive a fair trial, and violates the defendant's rights under the the Constitution of the United States.

The COURT: Motion overruled. Exception for the defendant.

I want to explain the ruling of the Court just given. The credibility of a statement given by a witness is simply for the Jury; The Court has no opinion at all, and expresses none on the record.

(Exception noted for the defendant by direction of the Court.)

Mr. McGEE: I would like to make another motion for a mistrial because of the comment by the Court that the statement by the defendant was voluntary, and the comment by the Court as to evidence in this case, in violation of the defendant's right of a fair trial as guaranteed under the Alabama Constitution. And also, that said comment is so prejudicial it could be used to prejudice the Jury so they couldn't give this defendant a fair trial.

The COURT: Motion for mistrial overruled.

Mr. McGEE: I would like an exception.

The COURT: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

Mr. McGEE: What I am trying to do is show this boy was held incommunicado for a period of three days, bombarded by State officials with threats of the electric chair if he didn't confess, until he finally said, "I will say anything." And he talked to this woman down there when he was still being held incommunicado. And there has been no evidence to rebut it. His mother didn't see him until Wednesday afternoon. The prosecutrix saw him in Police Headquarters at 11 o'clock when she talked to him. He was refused counsel. At no time was he permitted to contact his folks, friends, or lawyer.

183 The COURT: I will sustain the objection. There is no evidence as to a confession here.

The SOLICITOR: I will let you introduce the confession and you can question him if you want.

Mr. McGEE: The State has forfeited the right to introduce it, because they know the State rested without trying to introduce it because they know all of these women didn't identify him.

The COURT: You will have a right to comment on that before the Jury. If a confession is going to be introduced I will let you go in into the circumstances.

Mr. McGEE: I am not going to introduce it. In the first place, I haven't attempted to extract from him a confession. On the other hand, the Solicitor has introduced a confession made while in the

presence and custody of the officers which is alleged he made to the woman prosecutrix. And they have introduced in the sworn testimony of the prosecutrix that he did confess, and made that statement to her in the presence of officers without any threats. I think I have the right to rebut the accurateness of that statement, showing everything that happened to him from the time he was first picked up and held incommunicado until the present time.

The COURT: I would rule you were correct if a confession was taken from him under the circumstances you relate in Kilby Prison. If this defendant made a statement somewhere else any other time, I am not going to allow you to go into some other occasions. The Supreme Court recently ruled on that point. I am bound by that ruling.

Mr. MCGEE: I move the Court to permit the defendant to show——

The SOLICITOR: If we are going to have a long showing on it I move that the Jury be excused.

The COURT: The motion is overruled. I see no objection to making the motion in the presence of the Jury.

Mr. MCGEE: To show the defendant, a seventeen year old negro boy, who quit school in the 8th grade, was arrested at approximately 2:10 P. M. on November 10th, 1952, and was carried within a period of about fifteen minutes from then to the State Penitentiary, Kilby Prison, Montgomery County, Alabama, where he was held incommunicado by State and City officers and questioned
184 continuously the rest of the afternoon, and then permitted to sleep only a short while, some fifteen or twenty minutes; he was then carried into the next room where the electric chair was and questioned some more by the Deputy Warden, O. R. Dees, and accused of having made various kinds of attacks on some six white women of Montgomery County, Alabama. O. R. Dees further told him that if he didn't confess to these crimes that all the women would identify him and he was going to the electric chair. And that if he would confess that he would keep him out of the chair. After questioning him all night he was finally permitted to go to bed until the following morning, Tuesday. Tuesday morning early the officers again began a series of constant questioning all day Tuesday and part of Tuesday night. Then he was permitted to go to bed. That on Wednesday morning he was again questioned. And all the time the officers were telling him if he didn't confess to these crimes he would go to the electric chair, and if he did he would keep him out of the chair, until sometime finally Wednesday morning he agreed to confess to all of these crimes they had been accusing him. That he was then carried by the State officers of Montgomery County to Police Headquarters and there held by the Montgomery County Police and City Police officers until the prosecutrix in this case was permitted to view him.

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And I move the Court to permit me to prove these allegations, and in order to go to the credibility of the statement which is alleged he made in her presence while he was held.

And I move the Court to permit me to do so on the ground that a failure by the Court to permit me to do that is a denial to the defendant of his constitutional rights as guaranteed under the Fourteenth Amendment to the Constitution of the United States.

Two. That the failure of the Court, the refusal of the Court to permit me to do that is a denial to the defendant of due process of law as guaranteed by the Constitution of the sovereign State of Alabama.

Three. That the refusal to permit this proof on the part of the Court would constitute such a prejudicial error as to deny the defendant a fair trial in this case.

That is my motion to the Court.

The COURT: The motion is overruled.

185 Mr. McGEE: I would like an exception.

The COURT: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By Mr. McGEE:

Q. When did you first see your folks after you were picked up?
A. I asked them to let me see them right away.
Q. When did you finally see them?
A. Wednesday about 5 o'clock.
Q. 5 o'clock in the morning or afternoon?
A. Afternoon.
Q. 5 o'clock in the afternoon?
A. That is right.
Q. This isn't the first time you have been picked up by Montgomery Police?
A. No, it isn't.
Q. Were you picked up once before?
A. Yes, sir; I was.
Q. When was that?
A. In the summer sometime.
Q. How long did they hold you in the summer?

The SOLICITOR: That is objected to, unless he fixes it before the date of this trial.

Mr. McGEE: Before the date of this trial?

The SOLICITOR: I mean before this happened. If he was picked up before July 28th he might have been picked up on anything.

Mr. McGEE: Most of the victims looked at him and failed to identify him.

The COURT: Was he picked up before or after the offense charged?
The SOLICITOR: Before this offense occurred.
The COURT: Objection sustained.
Mr. McGEE: I would like an exception.
The COURT: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By Mr. McGEE:

Q. Do you remember talking to the prosecutrix down at Police Headquarters?
186 A. Yes, sir; I do.
Q. The police carried you down there from Kilby Penitentiary?
A. Yes, sir; they did.
Q. Had the arresting officers told you if you would admit having raped the prosecutrix that would keep you out of the chair?
A. Yes, sir, they did.

The SOLICITOR: That is objected to.
The COURT: Objection overruled. He is asking about the particular admission introduced in evidence. I think it is relevant.

By Mr. McGEE:

Q. Had they?
A. Yes, sir, they did.
Q. Were you scared?
A. Yes, sir; I sure was.
Q. Did you think by saying you did it that would keep you out of the chair?

The SOLICITOR: I object.
The COURT: Overrule the objection.

By Mr. McGEE:

Q. Did you think that would keep you out of the chair?
A. Yes, sir. They told me that.
Q. At that time had you seen your mom or pop, or any of your friends?
A. No, sir.
Q. Talked to a lawyer?
A. No, sir; I did not.
Q. Did you rape her?
A. No, sir; I did not.
Q. Where was you that day?
A. On July 28th?

POOR COPY

Q. Yes.
A. I was at home.
Q. What did you do at home?
A. During these hot days in summer we was playing a game of dominoes and cards in the front yard, and I was around home all day.
Q. Your mom and pop were working that day, weren't they?
A. Yes, sir.
187 Q. They didn't come around later or during that time and see you there?
A. No, sir, they didn't, they was working that day.

CROSS-EXAMINATION.

By the SOLICITOR:

Q. You know who I am, you have seen me before?
A. A number of times.
Q. Do you remember a conversation I had with you on the afternoon of the 11th of November, 1952?
A. I remember it.
Q. Out at Kilby?
A. Yes, sir.
Q. And there were present at that time Mr. O. R. Dees, Deputy Warden, and Mr. Murphy, the Classification Officer?
A. Yes, sir.
Q. Do you remember my asking you if I could help you?
A. I remember you telling me you could help me.
Q. Do you remember my saying there was nothing I could do for you, the law would have to take its course?
A. That is right. Mr. Dees said if I admitted it he would do his best to help me.
Q. Do you remember my saying to you I couldn't agree to anything, the law would have to take its course?
A. You told me I couldn't see anybody until I got straight with you.
Q. Do you know Dr. Bazar?
A. Yes, sir.
Q. Do you remember Dr. Bazar?
A. I do.
Q. You talked with Dr. Bazar after you were arraigned, didn't you?
A. He came out there.
Q. Did you talk to him at the County Jail?
A. Yes; I did.
Q. And you told Dr. Bazar at the County Jail you raped Mrs. Crowder, didn't you?

A. I didn't tell him nothing.
Q. You are swearing that is not true?
A. I didn't tell him I raped anybody.
Q. You didn't tell him you raped anybody?
188 A. I did not.
Q. Did you ever tell him you raped anybody?
A. Out there at Kilby I did.
Q. You didn't tell him that in the County Jail?
A. No, sir; I did not.
Q. You are swearing that is true?
A. Yes, sir.

Mr. McGee: He is under oath.

By the Solicitor:

Q. How many people have you told you raped Mrs. Crowder?
Mr. McGee: If we go into that I feel we should go into the details, what he told these people, and when he teld them, and why he told them, if that is what the Solicitor wants to show.
The Court: This is cross examination.
Mr. McGee: I withdraw the objection.

By the Solicitor:

Q. Who have you told since your arraignment you raped Mrs. Crowder?
A. You say out there I told Tuesday?
Q. Since your arraignment?

By the Court:

Q. Do you understand what arraignment means?

By the Solicitor:

Q. Since you came in here and we read the indictment to you.
A. I never told nobody.
Q. You haven't told nobody?
A. No, sir.
Q. Did you talk to Dr. Bazar over in the County Jail?
A. Yes, sir. I have talked to him twice.
Q. What did you talk about?
A. Came in and asked the same questions he asked me at Kilby.
Q. What did you tell him?
A. I didn't tell him nothing.
Q. You didn't tell him anything?
A. Not anything.
Q. How long did he talk to you?

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A. I don't know. I haven't the slightest idea.
Q. About fifteen minutes or an hour?
A. I haven't the slightest idea.
Q. Do you know what date it was?
189 A. No, sir; I don't.
Q. You never made one single, solitary statement to him?
A. Not as I remember it. I don't remember.
Q. You don't remember?
A. I don't remember.
Q. You remember talking to him?
A. Yes, sir; I remember talking to him.
Q. Where were you?
A. I was in the building across the street there.
Q. In the building across the street?
A. Yes, sir, the County Jail.
Q. Whereabouts were you in jail?
A. Yes, sir.
Q. Whereabouts were you in the jail?
A. I was held in jail when I talked to him.
Q. Whereabouts in jail?
A. Took me down—— --
Q. They took you to the Sheriff's office; is that right?
A. No, sir. Taken in the back dining room.
Q. Who was there with you and Dr. Bazar?
A. Nobody.
Q. Anybody with you and Dr. Bazar at Kilby Penitentiary?
A. There was one or two men together.
Q. Where did you talk to him?
A. I talked to him in my cell.
Q. In your cell?
A. That is right. That is where I first talked to him.
Q. Didn't you talk to him in Mr. Murphy's office?
A. That is when I first talked to him, and then we came back down to the office.
Q. Are you sure about the day I am talking about? I am talking about Dr. Bazar. Do you remember the day I am talking about?
A. I know the day you are talking about.
Q. You say you talked to him up in your cell. Didn't you talk to him in Mr. Murphy's office by yourselves, nobody else but you and him there?
A. Yes, sir. That is Dr. Rehling and myself.
Q. Dr. Rehling you talked to in your cell.
A. Yes, sir. And Dr. Bazar I talked to in Mr. Murphy's office.
190 Q. You had some fresh scratches on you when they talked to you, didn't you?
A. So the doctor said.

Q. You didn't see them yourself?
A. No, sir.

Mr. McGee: I object to that. The doctor didn't say scratches, and didn't say they were fresh. He said scars, and your Honor remarked the Solicitor's scratches were not even admissible, scratches in November from something that happened back in July. Any nigger would know the difference between a scratch and a scar, and the Solicitor should know it.

The Court: I will sustain the objection. We are now trying one case, and one incident that is alleged to have happened on the 28th day of July. No other case, no other evidence in any other case is before this Court and this Jury. I sustain the objection, and the witness will not be required to answer the question.

By the Solicitor:

Q. You were examined at City Hall, weren't you?
A. Yes, sir.
Q. Two doctors examined you down there, didn't they?
A. Yes, sir, they did.
Q. They asked you whether your statement was voluntary, didn't they?
A. I don't remember.
Q. You don't remember?
A. No, sir.

Mr. McGee: I object to a question like that without identifying the doctors asking him if his statement was voluntary.

The Court: Sustain the objection without the identification of the doctors.

By the Solicitor:

Q. Do you know where you were on July 1st, 1952?
A. On July 1st, 1952, I don't think I was in town.
Q. You were not in town?
A. I don't think I was.
Q. Where would you have been?
A. I was on the road with a traveling band.
Q. What day did you get back?
A. I just remember that is when I wasn't at home or in town.
191 Q. You were in town on July 28th, weren't you?
A. Yes, sir; I was.
Q. As a matter of fact, you went to Mrs. Crowder's house on that day, didn't you?
A. No, sir; I did not.
Q. You broke in there and you raped her, didn't you?
A. No, sir; I did not.

BLEED THROUGH POOR COPY

Q. How did you recognize her down there at Police Headquarters?
A. I didn't recognize her.
Q. You recognized her and you said to her, "you are the lady who lives on Cleveland Avenue, the first one?" You knew her, didn't you?
A. No, sir. You said she is one of the witnesses, and you pointed to me and said, "that is the one," and she said, "that is the one."
Q. As a matter of fact, she had already spoken to you?
A. I don't know whether she had, or not. You had already twelve pictures and you were pointing at me.
Q. You didn't say that?
A. No; I didn't.
Q. As a matter of fact, didn't you have a conversation with four women before you said anything to her and she said anything to you, didn't you?
A. I didn't count them. I don't know which one spoke to me.
Mr. McGee: This is objected to.
The Court: Objection sustained. You may ask him if he talked to somebody before he talked to her.
The Solicitor: That is exactly what I asked.
The Court: You may go into details of the conversation there with the defendant.
Mr. McGee: If he does, I can go into details.

By the Solicitor:

Q. Didn't you say, "you are the lady who lives on Cleveland Avenue, the first one?"
A. They asked me if I seen Mrs. Crowder some place on Cleveland Avenue.
Q. Didn't she look at you and say, "do you know me?" And you said, "you are the lady who lives on Cleveland Avenue?"
A. No, sir; I didn't.
Q. You don't remember anything like that?
192 A. No, sir; I don't.
Q. Didn't she ask you why you raped her and you said you didn't know; isn't that the truth?
A. That is what I said.
Q. And didn't you at that time recognize her?
A. No, sir; I didn't.
Q. Why did you say you recognized her if you didn't?
A. I wouldn't have said I did it if I hadn't been threatened the way I was—I would never have said it.
Q. How did you know she lived on Cleveland Avenue?
A. When she walked in there they said, "this is Mrs. Ann Crowder."
Q. Who said that?

A. Some man. I don't know who it was.
Q. Didn't three women walk in there?
A. I imagine they did.
Q. As a matter of fact, didn't they all walk in there and look at you and another one started talking to you, you talked to her awhile too?

Mr. McGEE: I renew my objection to the general conversation.
The SOLICITOR: I am not asking any details.
Mr. McGEE: I am going to request the same kind of general conversation if you are. I thought we were trying simply this one case.
The COURT: We are trying one case. I will let the Solicitor go into details of the conversation pertaining to this one case.
Mr. McGEE: If he is making general reference to it, we should have all the details.
The COURT: The Court rules otherwise.
Mr. McGEE: I would like an exception.
The COURT: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By the SOLICITOR:

Q. Didn't you have a conversation with some other women?
A. I don't know, sir.
Q. You don't know?
A. No, sir.
193 Q. Didn't Mrs. Crowder ask you, "do you know me?" And you said, "yes, ma'm, you are the lady who lives on Cleveland Avenue?"
A. No, sir; I didn't.
Q. You didn't say that?
A. No, sir.

The COURT: We have been over that about three times, asked him the same question three times. I don't think we should be going over the same question again and again.

By the SOLICITOR:

Q. Let me ask you this. You talked to Mr. Clark? You heard him testify here today? You talked to him in the County Jail?
A. Who is Mr. Clark?
Q. The man who testified here today and said he picked you up at the corner of National Avenue and Cleveland.
A. I saw him.
Q. You saw him?
A. Yes, sir; I did.

Q. You saw him in the County Jail, didn' tyou?
A. Yes, sir; I did.
Q. You told him he was the one who picked you up, didn't you?
A. No, sir; I didn't.
Q. In other words, you heard him testify about that, didn't you?
A. Yes, sir; I did.
Q. And he wasn't telling the truth?
A. No, sir.
Q. You didn't make any such statement?
A. No, sir; I did not.
Q. Had you ever seen him before?
A. No, sir, not to my remembrance.
Q. Did he pick you up out there?
A. No, sir, he didn't.
Q. Why did you tell him he was the one who picked you up?
A. I didn't tell him.
Q. Did you have a conversation with him?
A. Very brief one.
Q. Why did you tell him he was the one if he wasn't the one who picked you up?
A. I didn't hardly say anything to him. He asked me if I remembered him, ever talking to him.
194 Q. What did you say?
A. I told him, if I recall, I didn't remember him.
Q. What gave you the idea he was a traveling missionary?
A. A traveling missionary?
Q. Yes.
A. I don't know. He didn't tell me he was a traveling missionary. I didn't see him.
Q. He talked about the church, is that what gave you the idea he was?
A. He didn't talk to me about the church or anything else. Never saw him.
Q. You didn't deny to him he picked you up in the County Jail.
A. Didn't deny it?
Q. Yes.
A. I didn't say anything to him after my lawyer came and told me I wasn't to talk to anybody about anything. Whatever they said, I would just hear.

Mr. McGee: When I came in the case I told him not to say anything to anybody, whatever they said to him to just hear.

REDIRECT EXAMINATION.

By Mr. McGEE:

Q. How tall are you?
A. About five foot seven.
Q. That mustache, how long have you had it?
A. Ever since about thirteen, fourteen—I say about fourteen.
Q. Did you ever shave it?
A. No, sir, I have not.
Q. Didn't have it shaved off?
A. No, sir.
Q. At the time this Clark guy saw you in the County Jail what did he say to you when he came over there?
A. When he walked in the County Jail he was with officer Armstrong, he looked at me and said, "yes, that is him. Don't you look at me, nigger. Don't you know us white men don't let nothing like that happen to our women?" He stood there and looked at me a few minutes and him and Armstrong went out.
Q. Did you say anything about remembering him picking you up?
A. No, sir.
Q. As a matter of fact, he couldn't have picked you up
195 because you were never there?
A. No, sir.
Q. Had you ever seen him before he went to the County Jail with Armstrong?
A. No, sir.
Q. Have you got a straw-hat?
A. No, sir.
Q. Did the police after they arrested you go around and search your house?

The SOLICITOR: I object.

By Mr. McGEE:

Q. Did you that day assault Mrs. Crowder?
A. No, sir; I did not.
Q. How far did you say you went in school?
A. To the 8th.
Q. What part of the 8th; did you finish the whole 8th grade before you quit?
A. Just about to the last of it when I got sick.
Q. In other words, you didn't finish the 8th grade.
A. No, sir.
Q. Did they take your fingerprints, fingerprint you?
A. Yes, sir, in the County Jail.

POOR COPY

Q. You did discuss with the Solicitor about a trip to City Hall before you left Kilby?
A. Yes, sir.
Q. An interview with all of these prosecutrices?
A. Yes, sir.
Q. On that day, did they take pictures of you down there?
A. Yes, sir, they did.
Q. How many?
A. About ten or more.
Q. Later they took some more of you out at Kilby?
A. Yes, sir, they did.
Q. On Monday or Tuesday Dr. Rehling took some?
A. Yes, sir.
Q. Did they take some blood out of your arm?
A. Yes, sir, they did.
Q. Did they take anything else out of you?
A. Yes, sir.
196 Q. What did they take?
A. Took fluid out of my spine.
Q. They had to tap your spine to take the fluid out?
A. Sure.
Q. Who did that?
A. Doctor.
Q. Where were you when this was done?
A. At Kilby.
Q. Was it the prison physician?
A. No, sir, it wasn't.
Q. Do you know who it was?
A. No, sir.
Q. Did they order you to do this, order you to strip to take the pictures, or did you do it voluntarily?
A. No, sir, I didn't do it voluntarily.

CHARLIE WILLIAMS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

197 Q. Do you see that mustache he has got there?
A. Yes, sir.
Q. How long has he had it, as far as you know?
A. As far as I could remember, since I have been knowing him.
Q. Had a mustache since you have been knowing him?
A. Yes, sir.

Q. Are you pretty well acquainted with his general reputation in the community out there?

A. A few of them.

Q. What the neighbors think about him out there, are you acquainted with that?

A. Yes, sir, everybody.

Q. Was it good or bad?

A. It is good.

Q. They think good of him?

A. Yes, sir.

CROSS EXAMINATION.

By the SOLICITOR:

Q. Do you see him every day?

A. No, I don't see him every day because I works every day.

Q. Would you go for a period of weeks without even seeing him?

A. No, sir. I see him every week.

Q. Did you see him every week in July?

A. I saw him every week in July?

Q. That is what I asked you.

A. Yes, sir; I saw him.

Q. You saw him every week in July?

A. I don't say every week in July because I work some nights, three nights a week, and certain days of the week I don't see him.

Q. Could you have gone two weeks or more and not seen him?

A. If he was playing. He beats the drum in John Collins orchestra. Sometimes it would be late getting in and he would sleep in the day time.

Q. In other words, you go a week or two weeks, or maybe a month, without seeing him at all?

A. It could have been like that.

Q. As a matter of fact, he could shave his mustache off and grow it back again two or three times and you wouldn't know it?

198 A. No. It has never been cut clean since I have been knowing him.

Q. If sometimes you didn't see him for a month, he could have shaved it off and grown it back again by the time you saw him?

A. Yes, sir, he could if he left this neighborhood.

Q. As a matter of fact, he was gone the first part of July and August, wasn't he?

A. I cannot say that.

Q. You just don't know?

A. No, sir.

Q. Do you know whether you saw him during the month of July around home?

A. July of this year?

POOR COPY

Q. 1952.
A. Yes; I seen him in 1952.
Q. I know you saw him during the year. Did you see him the first part of July?
A. Yes, sir; I seen him the first part of July.
Q. See him two or three times a week during the first part of July?
A. I might have. I don't remember.
Q. He testified that he wasn't here the first part of July, he was playing with an orchestra and out of town on the road.
A. As I recollect, I seen him here the 1st of July.
Q. Saw him the whole month of July?
A. I don't know. I wouldn't say it was the whole month.
Q. Saw him every week in July?
A. I cannot say that.

RE-DIRECT EXAMINATION.

By Mr. McGEE:

Q. You don't think a sixteen year old boy could shave off his mustache and grow it back in a month, do you?

The SOLICITOR: That is objected to.
The COURT: Objection overruled.

By Mr. McGEE:

Q. Do you?
A. Yes, sir; I believe so.
Q. Shave it off and grow it back in a month, a sixteen year old boy?
A. It would grow back some, it wouldn't grow so long. Shave a mustache, and the mustache would grow out in three
199-205 or four days.
Q. I doubt very much that is so.
A. In about a week, because when I was sixteen I had a mustache.
Q. Okay, if that is your idea you are entitled to it. Every time you saw him in July he had a mustache then?
A. Yes, sir.
Q. If he was gone in July and August he couldn't have been here and it wasn't him who beat the woman in this case if it happened in July?
A. If away he sure couldn't.

206-208 BERTA POLLARD, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. What is your name?
A. Berta Pollard.
Q. Where do you live?
A. No. 16 Prospect Avenue.
Q. How long have you lived here in Montgomery?
A. I have been living around there on Prospect Avenue about thirty years, and work at the Capital City about twenty-five.
Q. You work at the Capital City Laundry?
A. Yes, sir.
Q. About twenty-five years?
A. Yes, sir.
Q. Do you know this defendant, Jeremiah, here?
A. Yes, sir. I named him Jeremiah when he was born.
209 Q. When you saw him about three months ago, did he have a mustache then?
A. Yes, sir.
Q. You say he did have a mustache then when you saw him three months ago?
A. I saw him walk by and I could see he had a mustache.

(No Cross Examination.)

REBECCA GOINS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. What is your name?
A. Rebecca Goins.
Q. Where do you live?
A. On Houston Street.
Q. How long have you been in Montgomery?
A. About sixteen years.
Q. Do you know the Defendant here?
A. Yes; I know him.
Q. How long have you known him?
A. About ten years.
Q. Do you live anywhere near where he lives?
A. No, sir.
Q. Whereabouts did you know him at?

POOR COPY

A. I have been knowing him from the church. We go to the same church.

Q. You met him at church meetings, and so forth?

A. Yes, sir.

Q. Do you know his family?

A. Yes.

Q. Do you see the mustache he has got?

A. I didn't know he had a mustache until today.

Q. How old are you?

A. Fifty-six years old.

Q. In the ten years you know him did you have a chance to see him very often?

210 A. No, sir, I didn't see him a whole lot.

Q. Do you think you know his reputation in the community where he lives?

A. It is all right as far as I know about it.

(No Cross Examination.)

211 J. LEWIS MILLER, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. Your name is J. Lewis Miller?

A. J. Lewis Miller, correct.

Q. You are Captain of the detective force of Montgomery City?

A. I am.

Q. You have been with the City quite awhile?

A. That is correct, yes, sir.

Q. You have been investigating some of these cases around here?

A. I have.

212 Q. Do you remember when you all picked this defendant up on a prior occasion?

A. Yes, sir.

Q. Do you remember that one of these victims, a Mrs. Burson, refused to identify him as her attacker?

A. Mrs. Burson never looked at him that time.

Q. When I was talking to you and Earl James, which was before I excused Mr. James, didn't you tell me in the presence of Mr. Earl James Mrs. Burson didn't identify him?

A. I didn't tell you Mrs. Burson didn't identify him. Mrs. Burson never looked at him the first time.

Q. You kept him in three days?

A. I beg your pardon. He was picked up August 30th, 1951, and kept there over night until we checked up his alibi and released.

Q. And at that time when I was talking to you and Earl James didn't you tell me, and didn't I ask you if he was picked up after the fifth offense, and you said after the fourth one.

A. After the second one, after Mr. Dowe's case. That is when he was picked up.

Q. Nevertheless, the Montgomery Police Force was satisfied he wasn't the party in two of those cases at that time and you released him.

A. That is correct.

CROSS-EXAMINATION.

By the SOLICITOR:

Q. Did anybody look at him?

A. No, sir.

Q. Any witnesses in any case?

A. No, sir, they didn't.

Q. Were you present at Police Headquarters on November the 12th, 1952, when Mrs. Crowder talked to this defendant?

A. I was.

Q. Do you remember the conversation?

A. Mrs. Crowder asked him if he knew her, and he said he did, that she was the first lady on Cleveland Avenue. And she further asked him why he raped her, and he said he didn't know. And she asked him how he entered the house, and he says through the back door.

Mr. MCGEE: I move to exclude that on the ground the proper predicate hasn't been laid.

213 The COURT: You better examine. I will overrule the objection.

By the SOLICITOR:

Q. Did anyone, did you or anyone in your presence or hearing threaten this defendant, coerce him, offer him any promise or hope of reward?

A. Did not.

Mr. MCGEE: I would like to have a subpoena issued for Earl James.

The COURT: He is over here.

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EARL D. JAMES, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. McGEE:

Q. When I was talking to you and Captain Miller, didn't Captain Miller tell me that Mrs. Burson didn't identify this defendant?
A. I didn't understand him to make such a remark.
Q. And didn't I tell him then if he would so testify I would release you from the rule and also release you as a witness?
A. In our conversation you asked which was the case in regard to Mrs. Crowder, and we told you which number it was.
Q. In our conversation at that time, Mr. James, didn't I say to Captain Miller it was after the fifth, and he said it was not, it was after the fourth attack this boy was picked up? Didn't he correct me when I said after the fifth attack?
A. I believe you are right.

CROSS-EXAMINATION.

By the SOLICITOR:

Q. Do you know the date he was picked up?
A. Do you mean the last case?
Q. No.
A. No; I do not. Mr. McGee asked me that question when I came back from lunch, and I told him I naturally didn't know when it was, and I told him I would find out, and I called Mr. Miller.

214 The SOLICITOR: We have a rebuttal witness who is not here. He said he preferred to testify tomorrow morning. His wife is expecting a baby, and if the Court is going to adjourn for the night I would like to put him on tomorrow morning.

The COURT: The Court is of the opinion we cannot finish this case tonight. I was hoping we could conclude all the evidence. There is only one more rebuttal witness to be heard, unless the defense has something in answer to that, and the Court is going to adjourn until 9 o'clock in the morning. Let us get an early start in this case. It wouldn't be fair to the Defendant, or to the attorney for the Defendant, to the Solicitor, and to you members of the Jury to have an argument of this case tonight. We are all tired, and I know that you are tired. The bailiff has made arrangements for you down at the hotel and everything will be done to make you comfortable, he will take you to breakfast in the morning, and we will all come back and get a good start.

As I told you before, you are not to discuss this case. You are not to discuss the evidence or anything that occurred here. Wait

to do that in the Jury room after you hear the Court's Charge as to the law. You won't even be allowed to read any newspapers. I know it is not the most pleasant place in the world to spend the night, and after all this is an important civic duty. If you want to communicate with your homes, or have anything sent to you from your homes to make you comfortable, you can arrange that through the bailiff. You cannot communicate with anyone directly.

The Court is going to take a recess now until 9 o'clock in the morning, and be in your places at that time and we will then proceed to conclude the case.

I presume we can excuse the witnesses unless the State and defense agrees that some need to come back. Do you have any witnesses you want to call back?

The SOLICITOR: I am going to ask Mr. Murphy to be back tomorrow morning.

Mr. MCGEE: I don't know what they are going to say. The defendant's witnesses are requested to be back, and the State's witness, Mr. Murphy, is requested to be back.

9:32 o'clock P. M.

215 Adjourned until Saturday, November 29th, 1952, at 9 o'clock A. M.

(The Jury retired in charge of the bailiff.)

Saturday, November 29th, 1952, 9 o'clock A. M.

Present:

The COURT.
The JURY.
The SOLICITOR and ASSISTANT SOLICITOR.
The Defendant and his counsel.

STATE'S REBUTTING EVIDENCE

ROBERT D. MURPHY, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the SOLICITOR:

Q. State your name, please.
A. Robert D. Murphy.
Q. What is your occupation?
A. Classification Officer, Department of Corrections and Institutions.
Q. Where is your office?
A. Kilby Prison.

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Q. Were you present in your office in the late afternoon, approximately 5:30 or 6 o'clock, November 11th of this year?
A. Yes, sir.
Q. Was the defendant there?
A. Yes, sir.
Q. Did you hear a conversation between myself and the defendant?
A. Yes, sir.
Q. Did you hear me, or did you hear the defendant——

By the COURT:

Q. Was anybody else present at that time?
A. Those in charge of him.

By the SOLICITOR:

Q. Did either you or anyone in your presence or hearing
216 threaten this defendant, offer him any promise or hope of reward or coerce him in any manner?
A. No, sir.
Q. Did you hear this defendant ask me whether I could help him?
A. Yes, sir.
Q. What did I say?
A. You told him you couldn't.
Q. Would you state all of the conversation as far as you remember it.
A. You told him you could make no promises—I don't remember the exact words—you said you couldn't make any promises of any kind, the State would furnish him a lawyer if he didn't hire one. I think you made some statement to the effect you didn't know for sure just what the offense would be, the law would have to take its course, some words to that effect.

CROSS-EXAMINATION.

By Mr. MCGEE:

Q. You say you are an officer at the State Penitentiary?
A. Yes, sir.
Q. That is where this nigger was first carried and held up there five days, wasn't he?
A. I don't know exactly how long he was out there.
Q. What is your position out there?
A. Classification officer.
Q. What kind of duty does that position entail?
A. The processing and classification of new prisoners as well as old prisoners.

Q. Take a man like this not formally charged, do you classify him?

A. As a rule we don't.

Q. In this case did you?

A. No, sir; I didn't classify him.

Q. When they discharge prisoners and send them other places, do you handle all that, changing records, and so forth? Do you keep up with the incoming and outgoing of inmates at Kilby; is that what your duties are?

A. Actually from the time he is brought in and processed. Once a man is classified and placed in a position and serial number, and on discharge he goes.

Q. Mr. Thetford was out there quite a lot when this boy
217 was first picked up.

A. I don't believe I saw him but one time.

Q. That is this particular time you are talking about now; is that correct?

A. Yes, sir.

Q. You talked with Mr. Thetford and Mr. Stewart last night after this case recessed?

A. I don't know that I did last night. I don't believe I did last night. I was outside and talked to him this morning.

PHILIP S. BAZAR, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the ASSISTANT SOLICITOR:

Q. State your name to the Court.

A. Dr. Philip S. Bazar.

Q. You are a practicing psychiatrist in Montgomery, are you?

A. I am.

Q. Please state the institutions which you have attended, the institutions of higher learning and degrees you have had from those places.

A. I am a graduate of McGill University of Montreal, Canada, was graduated in 1936, with degree of B.A., and Doctor of Medicine, and Master of Surgery.

Q. You are qualified in medicine and surgery as well as in psychiatry?

A. Yes, sir; I am.

Q. At what hospitals have you had training following your graduation?

A. I interned in New Jersey and in Montreal, chief resident in psychiatry at the Verder Institute, chief medical assistant at McGill University, and in Montgomery here.

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Q. Did you have psychiatric training, and did you work along that line in the service?

A. Yes, sir; I did.

Q. What was the nature of that work?

A. I was chief of the neuro-psychiatric section of the 134th Station Hospital in the Solomons, and on my return to the United States I was chief of the receiving hospital at Fort Bragg, North Carolina.

218 Q. What professional associations and societies do you belong to, and a member of what hospital staff here in Montgomery?

A. I am chief of the neuro-psychiatric section of St. Jude's, have a staff appointment at St. Margaret's, a member of the Montgomery County, Alabama State and American Medical Societies, member of the Alabama Neurologic and Psychiatric, and a member of the American Psychiatric Association.

Q. How long have you been engaged in the practice of psychiatry and medicine and surgery?

A. Since 1936.

Q. Did you at our request examine the defendant in this case, Jeremiah Reeves, Junior?

A. I did.

Q. State the number of times you have examined him, and the length of your examinations, and tell us what type of examination that you have made, and the tests you have made on this particular defendant.

A. Well, the direct examination, I saw him on two occasions, the first time at Kilby Prison on the afternoon of November 13th, 1925, for approximately two and one-half to three hours, and again at the County Jail on November the 20th for approximately two and one-half hours. I supplemented this examination with a report from the Welfare Department, and with the reports of tests made on this man, intelligence tests, and Minnesota multiphasic test made in Kilby Prison.

Q. State for what purpose these intelligence tests were given, what kind of tests were they—not about this man, but in general.

A. The basic test was the intelligence test, comprehension, and arithmetical reasoning of the patient. The Minnesota multiphasic is a test exploring phases, neurotic and psychopathic. By psychopathic we mean tendencies toward insanity.

Q. Based on your examinations of this man, the tests given him, the information which you have had available to you, are you of the opinion Jeremiah Reeves, Junior, is sane in that he is able to distinguish right from wrong?

Mr. McGee: I object to that.

The Assistant Solicitor: Let me finish my question.

By the ASSISTANT SOLICITOR:

Q. Even though he may know right from wrong applied to a case of this type, if he can recognize what is right, would you consider this man sane or insane?

219 Mr. McGEE: I object to that question on the ground it is based on facts that are misleading.

The COURT: Sustain the objection. There has been no qualification of him what this case is. For that reason I sustain the objection to the question in its present form.

By the ASSISTANT SOLICITOR:

Q. We are trying Jeremiah Reeves for an attack and rape on a Mrs. Ann Crowder. Let me ask you if in your discussions with Jeremiah Reeves the case of Mrs. Ann Crowder was discussed with him? She is a lady who lives on Cleveland Avenue.

A. Yes.

Q. Was that discussed with him?

A. Yes, sir.

Mr. McGEE: I object to that question.

The COURT: Overrule the objection if the conversation he had with him was in reference to the matter now on trial.

BY THE ASSISTANT SOLICITOR:

Q. I will repeat the question. In regard to this offense of rape, and this particular offense involving Mrs. Ann Crowder, are you of the opinion that Jeremiah Reeves was able to distinguish right from wrong, in that he knew his act upon this woman would be wrong, and was he able to distinguish between right and wrong, was he able to have elected from the facts either to do or not to do this particular act involving Mrs. Crowder and, therefore, in your opinion, based upon the facts, would he be sane?

Mr. McGEE: I object to the question on the ground it assumes a fact in issue. And on the further ground the question contains more than one question. That is the objection.

The COURT: I sustain your objection on the ground that it invades the province of the Jury as to whether or not in this particular case the defendant did, or did not, rape Mrs. Crowder. You may ask the witness whether or not this defendant was able to distinguish right from wrong, in his opinion. I am not going to let you assume the defendant is guilty of a particular act. The question will have to be phrased in such a way that it is not assumed.

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BY THE ASSISTANT SOLICITOR:

Q. In your opinion is Jeremiah Reeves sane in that he is able to distinguish right from wrong in relation to this particular offense with Mrs. Crowder? Is he able to distinguish right from wrong?

220 Mr. McGEE: I object to the question on the ground it assumes a fact.

The COURT: I am going to sustain the objection unless you eliminate from it this particular offense. It is a matter for the Jury to decide.

The ASSISTANT SOLICITOR: What I am trying to do is find out whether he can distinguish right from wrong in an offense of rape.

The COURT: If you want to put the question in the form of an assumption, assuming this act occurred, then in that event the question would be in proper form. It has to be on the basis of assuming and not the plain statement the offense did happen.

BY THE ASSISTANT SOLICTOR:

Q. Assuming that Jeremiah Reeves had raped Mrs. Ann Crowder, are you of the opinion at the time the act was done he was sane in that he could distinguish right from wrong and could adhere to the right?

Mr. McGEE: I object to the question on the ground it is a hypothetical question not supported by any evidence in the case. And, ground two, it assumes a fact in issue.

The COURT: Overrule the objection.

Mr. McGEE: I ask for an exception.

The COURT: Exception for the defendant.

(Exception for the defendant by direction of the Court.)

By the ASSISTANT SOLICITOR:

Q. You may answer.

A. It is my opinion that Jeremiah Reeves has the capacity to distinguish right from wrong, and has the capacity to adhere to the right, having made that distinction.

Mr. McGEE: I move to exclude the answer of the witness on the ground it is answering a hypothetical question that is not supported by evidence. On the further ground it is an answer to a question assuming a fact in issue.

The COURT: Overrule the objection.

Mr. McGEE: I would like an exception.

The COURT: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By the ASSISTANT SOLICITOR:

221 Q. I want to go a little further with you into this matter now. In your discussions with Jeremiah Reeves I believe you testified the name of Mrs. Crowder was discussed?

A. Yes, we did.

Q. Did you make any threats to him, offer him any reward, or hope of reward, or coerce him to talk to you?

A. No.

Q. At the time of your interviews with this defendant was anyone present with you?

A. No.

Q. Did Jeremiah Reeves admit to you he had raped Mrs. Ann Crowder?

MR. MCGEE: That is objected to.

THE COURT: Objection overruled.

MR. MCGEE: I object to the question on the ground, one, it calls for an answer which is a deprivation of the defendant's constitutional rights under he 14th Amendment to the Constitution of the United States.

Two. A proper predicate hasn't been laid that the defendant's alleged statement was a voluntary one.

Three. The admission of his statement, or alleged confession of the defendant, is a deprivation of the defendant's constitutional rights and due process of law as guaranteed by the sovereign State of Alabama.

Four. Such admission is a direct violation of the defendant's constitutional rights under the 14th Amendment of the Constitution of the United States.

THE COURT: Overrule the objections.

MR. MCGEE: I ask for an exception.

THE COURT: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

MR. MCGEE: I would like to move the Court to permit us to have a hearing on whether or not this statement which the doctor is about to give, whether or not it was voluntarily made. I move the Court for permission to make this showing, upon ground one—the defendant is a seventeen year old nigger boy who was arrested on the 10th day of November at 2:10 P. M., and incarcerated in the State Penitentiary incommunicado until Wednesday at approximately 5 P. M.; during that period of incarceration, while held incommunicado, the defendant was held in a cell ad-

222 jacent to the room in which the electric chair is located, and the defendant was constantly questioned by a series of officers, State officers, and threatened continuously with death in the electric chair. The defendant was then placed in the room

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at night time with the electric chair, and there questioned by Deputy Warden R. O. Dees until finally, after various officers told him the only thing he could do to save his life and keep out of the chair was to confess to these various cases, and after being subjected to much mental torture the defendant did agree to confess to anything they wanted him to.

That further, while being held there the defendant was stripped naked and forced to submit to photographs taken by Dr. C. J. Rehling, the State Toxicologist. He had his spine tapped, and right arm, and fluid extracted by the prison doctor. We want an opportunity to show that this statement taken by the witness was not a voluntary statement.

The COURT: Before I rule on the motion I want to ask you whether you have any evidence that you wish to make a showing of if anyone was present at the time Dr. Bazar talked to the defendant, or if anyone at that time used any coercion or force on him? Not at some other time, but at the time or times Dr. Bazar talked to him?

Mr. McGEE: What I want to show is a whole series of force and coercion continuously from the time he was taken out to Kilby until he was brought over to the County Jail without seeing an attorney. He was still out at Kilby at the time the doctor talked to him.

The COURT: The motion is overruled.

Mr. McGEE: I would like an exception.

The COURT: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By the ASSISTANT SOLICITOR:

Q. Did he admit to you he had raped Mrs. Ann Crowder?

A. Yes, sir, he did.

Q. Do you recall any statements he made to you about this particular act?

Mr. McGEE: I object to the question on the ground it is assuming a fact in issue.

223 The COURT: Objection overruled.

Mr. McGEE: I would like an exception.

The COURT: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By the ASSISTANT SOLICITOR:

Q. Do you recall any statement he made to you about this particular act?

A. Yes. In attempting to explore the motivation for his act,

which he admitted had occurred, I attempted to learn whether there was a physical, sexual gratification associated with the episode, and inquired whether he recalled having had an ejaculation in the course of the act, and he admitted that he had.

Mr. McGee: I move to exclude the answer on ground, one, the answer isn't responsive to the question. Ground two, the answer is in response to a question that assumes a fact in issue.

The Court: Objection overruled.

Mr. McGee: I would like an exception.

The Court: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

By the Assistant Solicitor:

Q. Do you recall whether or not he told you how he entered that particular house?

Mr. McGee: I object to the question on the ground it assumes a fact in issue.

The Court: Objection overruled.

Mr. McGee: I would like an exception.

The Court: Exception for the defendant.

(Exception noted for the defendant by direction of the Court.)

The Witness: I don't recall if he indicated how he made his entry in the house.

Mr. McGee: I object to the answer, and move to exclude the answer on the ground the answer is in response to a question that is assuming a fact in issue, and move to exclude it.

The Court: The motion is overruled.

Mr. McGee: I would like an exception.

The Court: Exception granted for the defendant.

224 (Exception noted for the defendant by direction of the Court.)

By the Assistant Solicitor:

Q. You stated you were exploring his motives. Again, with reference only to this particular case, did he state to you what his motives were in going to Mrs. Crowder's house? I will add another part to that. And did he ever make any change in the statement of his motives?

Mr. McGee: I object to the question on the ground it assumes a fact in issue.

The Court: I will sustain the objection in the form in which the question is put.

The Assistant Solicitor: I will not press the question.

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CROSS EXAMINATION.

By Mr. McGEE:

Q. What time did you say you first saw this defendant?
A. I didn't say what time. I said in the afternoon of November 13th.
Q. You say you talked to him approximately how long?
A. About two and one-half to three hours.
Q. You made one more examination of him, I imagine?
A. That is right.
Q. Where was that examination made?
A. At the County Jail.
Q. While he was being held in Kilby Penitentiary, on the fi. examination you testified you gave him an intelligence test, believe you said, and also gave him the Minnesota multiphasic test.
A. Yes, sir.
Q. What kind of an intelligence test was it?
A. I didn't give him those tests. I reviewed them. They were administered by, as I understand, Mr. Murphy.
Q. Were you present when Mr. Murphy administered those intelligence tests?
A. No, sir.
Q. Do you know whether Mr. Murphy is a medical physician?
A. It doesn't take a medical physician.
Q. I didn't ask you that. I asked if you know whether Mr. Murphy is a medical physician or medical doctor.
225 A. I know he is not a medical doctor.
Q. You were not present when the tests were made?
A. That is correct.

Mr. McGEE: I move to exclude that part from the direct examination as far as these two tests are concerned.

The COURT: I sustain the objection to any tests he didn't give or didn't supervise.

The ASSISTANT SOLICITOR: He simply testified he had the benefit of those tests.

The COURT: There is no evidence of the way in which they were given, as I remember. I am ruling out any reference now to those particular tests.

By Mr. McGEE:

Q. Let us explore the examination you made of him on your first visit out there. In that examination do you recall some of the questions you put to him in an endeavor to determine whether he was insane or sane.

A. Yes, sir.

Q. I would like you to repeat them, if you will be so kind.

A. Well, we follow a form or, rather, I did. The test involves first providing him with an opportunity to describe whatever he wanted to in relationship to acts of which he stood accused. It also involved a review of the highlights of his childhood, fundamental history. It involved an examination of his mental resources in terms of intellectual equipment. A review of his psychologic progress. A review of his social relationships, queries that would reveal any evidence of adolescent material, highlights of daily experiences, orientation as to time and places and values, moral values, attitudes, capacity to calculate, the use of tests that would determine the patient's capacity to do abstract thinking, to reveal his capacity to distinguish absurdities in pictures, and statements used to test or determine his capacity to make sound judgments. I think that constitutes about the whole circle. Of course, I went into detail about skills, and attitudes, and preferences, his sexual development, the highlights in terms of his sexual development, his social relationships and attitudes. That constitutes approximately the scope of the examination.

Q. Speaking of education, assuming a man has the ability to complete a college education, that doesn't indicate he is sane or insane.

226 A. No. That is part of the examination.

Q. And as far as a man's ability at some particular skill, work at carpentry, does not indicate sanity or insanity?

A. No.

Q. A man's ability to execute a will himself, that doesn't necessarily indicate his sanity or insanity, does it?

A. Not of itself.

Q. Have you done any work in the State mental institutions like Bryce Institute?

A. Yes, sir. My training was in Verdun Protestant Hospital at Montreal. And, of course, my Army experience, in which I headed up the nervous diseases for three years.

Q. Do you know that they have an instrument installed at Bryce Institute to determine whether an insane person would know the difference between right and wrong?

A. No; I don't believe I do.

Q. At Verdun—

A. Verdun Protestant Hospital.

Q. At the Verdun Protestant Hospital when someone was confined—do they commit people there for observation in order to see if they were insane?

A. There was such a thing as a voluntary commitment, and such a thing as commitment by compulsion.

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Q. When you were up at the Verdun Hospital, how many did you have under observation?

A. It would vary. The commitment, of course, was accomplished by an outside physician generally, or frequently, when he was not able to make a diagnosis. Sometimes a diagnosis could have been readily made on the first day. Sometimes the problem was more assiduous and sometimes required a more prolonged observation.

Q. Where is this institution located?

A. In Verdun, Quebec.

Q. In Canada?

A. Yes, sir.

Q. Do you know at the Bryce Hospital, which is in Tuscaloosa, Alabama, that the average period of time before they can determine whether a person is sane or insane would run four months? Is that consistent with your knowledge of psychiatry?

A. No.

227 Q. That is not consistent?

A. No.

Q. What is your idea about that matter? Be a little bit more specific.

A. There is no arbitrary rule or length of time. It depends upon the case—

The ASSISTANT SOLICITOR: Let him finish.

Mr. McGEE: How do you know he isn't finished?

The COURT: Proceed.

The WITNESS: It is no definite problem. There are some cases that require considerable study, but to take four months to arrive at a diagnosis would, of course, be quite long. There are other cases that are so subtle in their manifestations that the length of time varies before we can give a definite diagnosis of that particular case. The Bryce Hospital is staffed so small and the population so large, the length of time would not necessarily be indicative of the severity of the case.

Q. Do you know how large the staff at Tuscaloosa is?

A. It fluctuates.

Q. Do you know how large it is?

A. Not of my own knowledge.

Q. Have you been over there?

A. Yes, sir.

Q. Been over there lately?

A. No, sir.

Q. You don't know what time I was referring to?

A. No.

Q. What do you mean by the selection of the staff?

A. I said fluctuation. It would be determined in some respects by the ability of the examiner to apply himself to that specific examination.

Q. What I was asking you was—apparently you don't want to answer—in your opinion, assuming a man appeared to be a healthy, strong individual, it would take a long period of time to determine whether that man was normal, or not.

A. They can be so subtle the manifestations are not as easily identified.

Q. That kind of person would take a considerable period of time?

A. Again I say it would depend largely on the type of manifestations, and time the examiner could devote to the examina-
228 tion.

Q. It is not possible for a person to be absolutely insane, as insane as any psychiatrist could determine, and still at times have normal periods for hours at a time without any indication of insanity, and be absolutely as normal as you are; isn't that so?

A. As far as the behavior might go, his insanity would probably be there.

Q. When you talked to this boy it was at the request of Mr. Thetford, the State Solicitor, and Mr. Stewart?

A. That is right.

Q. You are being paid for your examination?

A. I don't know yet.

Q. You are going to bill the State of Alabama?

A. I haven't made any arrangement as to how it would be paid and when it would be paid if there was to be any forthcoming.

Q. You said if there is any forthcoming you will get paid?

A. I will get paid. As I say, I don't have any assurance about it, that I would be paid.

Q. Will you bill the State for it?

A. That I couldn't tell. If the fund is available.

Q. If you are told the fund is available you will bill the State?

A. That is right.

Q. Have you any doubt you will be paid for it?

A. Yes.

Q. Any serious doubt?

A. Yes.

Q. You have?

A. Yes, sir.

Q. When you went out there you went to examine this boy, wouldn't you consider it an examination of a patient?

A. Beg pardon?

Q. Wouldn't you consider your examination of that boy an examination of a patient?

A. Yes.

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Q. Isn't it a rule of medical ethics that doctors don't testify about a private examination they make of a patient?

The ASSISTANT SOLICITOR: That is objected to. He is here under subpoena at the request of the State.

The COURT: Objection sustained.

229 By Mr. McGEE:

Q. Would you say any person who for long periods of time would sit alone by himself, gaze up into space for a period of hours, and maybe after having dinner go without saying anything to anyone for a period of hours, grab the back of his head a few minutes and take off running, and conducts himself that way repeatedly off and on on various different occasions; and, further, at times would be subject to violate attacks of crying and laughing —would you consider a person like that an insane or sane person?

A. I wouldn't venture a judgment or express an opinion.

Q. Would you consider him having a normal mentality, or would he have a normal mentality?

A. Yes, sir, in terms of insanity.

Q. He might be insane also?

A. Yes, sir, he might be.

Q. I believe you all examined this boy about two and one-half hours at Kilby and a couple of hours across the street?

A. Yes, sir.

Q. Four or five hours all together?

A. That is right.

Q. Based on that you say he is insane?

A. Yes.

RE-DIRECT EXAMINATION.

By the ASSISTANT SOLICITOR:

Q. In reference to counsel's inquiry into your financial arrangement, do you recall anything I said to you about financial arrangements when I first talked to you about examining this boy?

A. My recollection is that you asked me to examine him; that you didn't know whether I would have a fee; that maybe something could be arranged, and would I take it on that basis.

Q. And you agreed to do it, didn't you?

A. I did.

Q. Since that time I told you we hope we can pay you.

A. That is right.

Q. And we will try to arrange for payment?

A. Yes, sir.

TESTIMONY CLOSED

230 9:45 A. M. Recess

(The Jury retired to the Jury Room in charge of the bailiff.)

10:03 A. M. Court Resumed
Parties present as before noted

COLLOQUY

Mr. McGEE: I would like to make a motion at this time for a mistrial upon the ground, one, that a member of the Jury when questioned on his voir dire answered falsely.

Ground two, that the panel was questioned as a whole by the Court as to their interest and bias in this matter, and by counsel for the defense as to their activities, and it has just been brought to my attention, to the attention of defendant's counsel, that one member of the Jury, who is the chief of the Montgomery Reserve Police Force, which Police Force was organized for the dual purpose of tracking down alleged negro rapists and night time burglaries; that said chief of the Montgomery Reserve Police Force was active in the work on this case. His name is Jack Page, and I would like to call him as a witness to support my motion. Had that been brought out he wouldn't be on that Jury. And I don't believe with him on there there is any possibility of this man getting a fair trial. This is a horrible case against this guy and means everything to him, and we can certainly have a Jury without that in Montgomery County.

The COURT: The Jury was qualified by the Court separately and individually. The Jury was also qualified as to every question propounded and asked that they be qualified by you. I would like to have a hearing on it outside of the presence of the Jury. I would be glad to grant you a hearing on it.

The SOLICITOR: There was no question asked whether any member of the panel was a member of the Reserve Police Force. I am a member of the Naval Reserve and that doesn't enter into my qualifications. He has been working on cases, but has not worked on or had any connection with this case, and didn't have any opinion or bias in this case.

231 Mr. McGEE: If he is working, active in the Reserve Force, that is part of his occupation. He was active in these cases and still is, and certainly has an interest and bias in this case. He has been investigating them with the Police Force. He is bound to have independent knowledge. It is to the honor of Montgomery County to establish a fair case, and I am sure the Solicitor would be glad to have a mistrial and give every defendant a fair trial who might be tried in this County.

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The SOLICITOR: I don't think you can unqualify anybody after the trial has reached this stage.

Mr. McGEE: His Honor can enter a mistrial.

The COURT: I don't think that disqualifies him unless you show Mr. Page has an opinion about this case. He said he had no opinion about this case.

Mr. McGEE: That is part of his occupation. I think it is prima facie to show interest and bias, a member of the Reserve Police Force organized to track down alleged rapers. I am not trying to sell horses in this. I am talking about honest to goodness christian facts.

The COURT: Have you any evidence to show he is biased?

Mr. McGEE: By questioning him, that is all.

The SOLICITOR: I would object to questioning him. He cannot go back into that.

Mr. McGEE: He is the chief of the Montgomery Reserve Police Force on active duty running down this defendant and acquainting himself with the facts connected with this case, with this defendant. I would like to put him on the stand.

The SOLICITOR: I object to any questions being propounded to him.

Mr. McGEE: I would think the State wouldn't want to accept any verdict rendered by this Jury. It is not worth taking that chance. There is no reason why this nigger could not be tried by a juror without excepting to one member.

The COURT: The Jury has been qualified and there is no duty on the Court to requalify the Jury. Motion overruled.

Mr. McGEE: I would like an exception.

232 The COURT: You may have an exception.

(Exception noted for the defendant by direction of the Court.)

10:09 A. M.

The Assistant Solicitor opened the final argument to the Jury on behalf of the State.

10:33 A. M.

Mr. McGee presented final argument to the Jury on behalf of the defendant.

11:13 A. M.

The Solicitor presented final argument to the Jury on behalf of the State.

During the closing argument of the Solicitor to the Jury:

Mr. McGee: I object to him saying I questioned the integrity of the Jury. I only objected to one of the jurors.

The COURT: Go ahead, Mr. Thetford, with that qualification.

233 CHARGE OF THE COURT

JAMES J. CARTER,
Special Judge.

GENTLEMEN OF THE JURY: It now becomes my duty as the Judge presiding at this trial to charge you as to the law governing this case. You have been selected to serve on this Jury, and upon you, as citizens of Alabama, selected to sit on this Jury, devolves the duty to pass upon an issue which involves the life and liberty of a fellow citizen. Bring to the discharge of this duty all the wisdom, patience, impartiality and courage that you possess. Give to the evidence in this case your faithful, earnest and impartial consideration, examine it deliberately, coolly and dispassionately, and let the evidence in this case be the great pole star, in the light of which you are to pursue your quest in your investigation after the truth of the matters submitted for your consideration and decision. Let nothing interfere with your fair judgment, all to the end that under the law and the evidence full and complete justice may be done between the State of Alabama and this defendant.

Now, gentlemen, with reference to your duty as the Jury in this case, and my duty as the Judge presiding at this trial, let me say that you as a Jury, and I as a Judge, have each a separate and distinct province, within the bounds of which each of us must keep if justice is to be done according to law. It is my duty as Judge to preside at this trial, to rule on points of law, and to instruct you as to the law governing the case. As the Judge presiding at the trial of this case, I have no opinion as to the facts, and if I did have, it would be highly improper for me to express an opinion. I have no opinion as to the facts, and I instruct you that you are not to consider in your deliberations any ruling or statement made by me at any time during the course of this trial as being an indication I have any opinion at all as to the facts, for I have none.

In this case, gentlemen of the jury, you, and you alone, are the sole judges of the facts, and the weight and sufficiency of the evidence is for you alone. All questions of fact are to be determined by you, and it is not for the Judge to give you in-

234 structions as to matters of fact.

In this case, gentlemen of the jury, we are trying one action and one offense, you are to try that action and that action alone, on the evidence that comes from that stand and nothing else. You, and you alone, will be the judges of the truth, and you are to find the truth. The credibility of the witnesses and the weight to be given their testimony is for you as the triers of fact. You have seen the witnesses on the stand, you have heard

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them testify, you have had an opportunity to observe their demeanor on the stand; you may consider their interest in the case, the relation of the witnesses to the parties involved, and whether they are willing, or unwilling, or too willing witnesses. From the evidence you are to determine the truth. If you find that a witness testified falsely as to any material fact, you may, in your discretion, disregard all the testimony of that witness, or you may accept that which you find to be true and reject that which you find to be false.

Now, as to any statement, or alleged confession or admission which may have been made, the weight of such a statement or admission is for you and you alone, and you are to determine the weight and credibility of the evidence here in the light of the circumstances that were existing at the time such statement was given.

Now, gentlemen of the jury, the defendant in this case has testified in his own behalf, and this he has a perfect right to do. You cannot capriciously disregard his testimony anymore than that of any other witness. The law is that you must take his testimony and consider it along with all the other testimony in the case, but while you are considering his testimony you may take into consideration the fact that he is the defendant in the case and is interested in the result.

Now, gentlemen, when a defendant is placed on trial charged with the commission of a public offense he is, under the law, presumed to be innocent. This defendant enters this trial with this presumption of innocence in his favor, and it is a fact that is to be considered as evidence and should not be disregarded, and this presumption of innocence remains and abides with the defendant throughout the trial until overthrown by evidence which convinces the Jury of the defendant's guilt beyond a reasonable doubt.

235 The defendant here is being tried under an indictment charging the offense of rape. The mere fact that the defendant was arrested and accused of the alleged offense, and the further fact that the Grand Jury found an indictment against him therefor, are not facts or circumstances to which the Jury is allowed to look in determining the guilt or innocence of the defendant, nor is the accusation, arrest or indictment circumstances in law or in fact showing or tending to show that the defendant is guilty of the offense charged. These things were merely the authorized procedure by which an accused may be put upon trial, and are in no sense facts or circumstances from which it may be judged that he is guilty. Gentlemen, the presumption of innocence, evidentiary in its nature, under all the rules of law, attends the accused throughout the trial, and until the presumption is overcome by the evidence in the case, and until it is shown beyond

a reasonable doubt and to a moral certainty that the presumption must fall and that the defendant is guilty.

Now, in this case, the burden of proving that the defendant is guilty as charged in the indictment rests upon the State, and before a conviction can be had in this case the State must satisfy the Jury of the defendant's guilt beyond a reasonable doubt. Unless the State so satisfies you of the defendant's guilt beyond a reasonable doubt, then the defendant is entitled to an acquittal at your hands. For a verdict of guilty to be returned in this case, the entire Jury shall believe from the evidence, beyond a reasonable doubt and to a moral certainty, that the defendant is guilty as charged in the indictment, to the exclusion of every probability of his innocence, and every reasonable doubt of his guilt, and, if the prosecution has failed to furnish such measure of proof, and to so impress the minds of the Jury of the defendant's guilt, the Jury should find the defendant not guilty.

Now, the phrase "reasonable doubt," is self-explanatory and efforts to define it do not always clarify the term, but it may help you some to say that a doubt which would justify an acquittal must be an actual and substantial doubt, not a mere possible doubt. A reasonable doubt is not a mere guess or surmise, and it is not a forced or a captious doubt. If, after considering all the evidence in this case, you have an abiding conviction of the truth of the charge, then you are convinced beyond a reasonable
236 doubt, and it would be your duty to convict the defendant.

The reasonable doubt which entitles an accused to an acquittal is not a mere fanciful, vague, conjectural or speculative doubt, but a reasonably substantial doubt, arising from the evidence and remaining after a careful consideration of the testimony, such as reasonable, fairminded and conscientious men would entertain under all the circumstances.

Now, you will observe, gentlemen, that the State is not required to convince you of the defendant's guilt beyond all doubt, but simply beyond all reasonable doubt and to a moral certainty. Now, moral certainty is that degree of assurance which induces a man of sound mind to act, without doubt, upon the conclusions to which it leads, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

I am going to define what is meant by circumstantial evidence. Circumstantial evidence is the proof of certain facts and circumstances in a given case, from which a Jury may infer other connected facts which usually and reasonably follow, according to the common experience of mankind. Now, the humane provision of the law is, that upon circumstantial evidence there should not be a conviction unless to a moral certainty it excludes every other

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reasonable hypothesis than that of the guilt of the accused. No matter how strong may be the circumstances, if they can be reconciled with the theory that some other person may have done the act, then the guilt of the accused is not shown by that full measure of proof which the law requires.

Now, gentlemen of the jury, you have heard the testimony in this case as to the good character of the defendant. The law on that subject is this: "Good character, if proved by the defendant, and taken in connection with all the other evidence, may generate a reasonable doubt which would entitle the defendant to an acquittal, even though without such proof the Jury would convict."

Now, the indictment in this case charges as follows: "The Grand Jury of said County charge, that before the finding of this indictment Jeremiah Reeves, Junior, whose name is to the Grand Jury otherwise unknown, forcibly ravished Mrs. Ann Crowder, a woman, against the peace and dignity of the State of Alabama."

237 Under this indictment the defendant is charged with the offense of rape. Now, under Section 395 of Title 14 of the Code of Alabama of 1940 it is provided: "Any person who is guilty of the crime of rape shall, on conviction, be punished at the discretion of the Jury, by death or imprisonment in the penitentiary for not less than ten years."

Now, rape, gentlemen of the jury, is having unlawful carnal knowledge of a woman, forcibly and without her consent. The law of Alabama is that, "to sustain an indictment for rape, proof of actual penetration is sufficient, when the act is shown to have been committed against the consent of the person on whom the offense was committed."

Force is an indispensable element of the offense of rape. The consent of the female yielded at any time before the act of penetration relieves the act of its felonious character. The force need not be actual physical force. The force may be actual physical force overcoming the resistance of the woman, but it is sufficient if the force is constructive force such as duress or being put in fear. The offense of rape is complete if the woman is made to yield through fear, and does not consent voluntarily to the act of sexual intercourse. Thus, one who by force and against the consent of the female has sexual intercourse with her is guilty of rape.

Now, gentlemen, the indictment charging rape also includes the lesser offense of assault with intent to ravish. The law of Alabama provides that any person who commits an assault on another with intent to ravish, shall, on conviction, be punished by imprisonment in the penitentiary for not less than two nor more than twenty years. Assault with intent to ravish must be a forcible attempt to have sexual intercourse with a female against her consent. The

offense of assault with intent to rape includes all elements of rape except the sexual act, and with an intent to have intercourse with a female by force and against her consent. To justify a conviction for assault with intent to rape, the evidence must show acts and conduct on the part of the defendant leaving no reasonable doubt of the accused's intentions to gratify his lustful desire against the consent of the female and regardless of resistance.

The indictment charging rape also includes the lesser
238 offense of assault and assault and battery. The Alabama law provides that "any person who commits an assault, or an assault and battery on another, shall, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the County Jail, or sentenced to hard labor for the County, for not more than six months."

Now, an assault is an attempt or offer, with force or violence, to do a corporal hurt to another, whether from malice or wantonness, with such circumstances as denote at the time an intention to do it, coupled with a present intention to convey such intention into effect. And any touching of another in rudeness or anger is an assault and battery.

Now, gentlemen of the jury, to the indictment in this case the defendant has interposed two pleas. One is the plea of not guilty, and the other is the special statutory plea of "not guilty by reason of insanity."

The plea of not guilty is what we call a plea of the general issue, and under this plea the burden is upon the State to satisfy the jury by the evidence of the defendant's guilt of the offense charged beyond a reasonable doubt. The State has the burden of proving every element of the crime charged against the defendant, and the law requires that in order to convict, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt and to a moral certainty.

The plea of not guilty by reason of insanity is a special plea, and the burden of proving this plea is upon the accused, and under the law he has the burden of proving to the reasonable satisfaction of the jury his defense of insanity. Under our law, the question of the accountability of a person for criminal action can be triable only under a special plea of insanity interposed at the time of the arraignment of the defendant. The defense of insanity must be specially pleaded, and it has been pleaded in this case, because the plea of the general issue "not guilty" does not put in issue the question of the irresponsibility of the accused by reason of the alleged insanity; and, without this special plea the defendant could not offer evidence of his insanity. The purpose of the statute has been set to separate, as far as possible, the two defenses, "not guilty" and "not guilty by reason of insanity," and

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to have the proof directed to each of the two defenses, and
239 the verdict to respond to each of such defenses.

It has been said by an Alabama Jurist that, reason being the common gift of God to every man, every man is presumed to be sane—that is, of natural and normal mental condition; and, I charge you that under the laws of Alabama every person over the age of fourteen years charged with crime is presumed to be responsible for his acts.

Now, the burden of proving that the defendant is irresponsible is cast upon the accused, and under the law he has the burden of clearly proving to the reasonable satisfaction of the Jury his defense of insanity.

The proper legal rule of responsibility in criminal cases is well settled in Alabama, and one who is so insane as to be incapable of entertaining the criminal intent cannot be guilty of crime or held criminally responsible for his acts. The legal tests by which one's responsibility for crime is judged are now as follows:

1. Where there is no capacity to distinguish between right and wrong, as applied to the particular act, there is no legal responsibility.

2. Where there is such capacity, a defendant is nevertheless not legally responsible if, by reason of the duress of mental disease, he has so far lost the power to choose between right and wrong as not to avoid doing the act in question, so that his free agency was at the time destroyed; and, at the same time, the alleged crime was so connected with such mental disease as the relation of cause and effect, as to have been the product or off-spring of it solely, these are the tests by which you are to be guided in considering the special plea of "not guilty by reason of insanity."

Insanity to relieve from criminal responsibility must be caused by or result from a disease, lesion or disorder of the brain or mind. Not every transient departure from normal conduct is insanity. For example, anger itself is often said to be a sort of madness, but it is not such insanity as confers legal irresponsibility for crime.

Irresistible impulse generated by wicked propensities will not excuse the violation of law. Depravity is not a disease. High
240 temper, hot blood, and passion are not such mental ailments as will excuse the commission of crime.

Now, gentlemen of the jury, in this case you have heard evidence concerning alibi. Now, an alibi is defined as this. It is a term used to express that mode of defense to a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence to show that he was in another place at the time. When the defendant attempts to prove an alibi, the burden of proof is upon him to prove

it successfully. The burden of proof is on the State to convince the Jury by the evidence beyond a reasonable doubt that the defendant is guilty as charged, and this burden is never discharged until after a consideration of the whole evidence, including the evidence offered as to an alibi, and the Jury is so convinced. In order for the evidence as to an alibi to be sufficient in law to generate in the minds of the Jury a reasonable doubt of the defendant's guilt, it must be strong and cogent enough to reasonably satisfy the Jury, when taken and considered with all the other evidence, that the defendant was at some other place, and could not have committed the act charged. The great weight of authority supports the well established rule, that the defendant is entitled to an acquittal if the evidence concerning the alibi, together with all the other evidence in the case, raises a reasonable doubt of guilt.

Now, gentlemen of the jury, if after fairly and fully considering the evidence you are not satisfied of the defendant's guilt beyond a reasonable doubt and to a moral certainty, then you should acquit the defendant, and in that event your verdict will be, "we, the Jury, find the defendant not guilty."

If you are satisfied from the evidence beyond a reasonable doubt and to a moral certainty that the defendant had sexual intercourse with Mrs. Ann Crowder, forcibly and without her consent, and if the defendant in this case has clearly proved to your reasonable satisfaction his defense of insanity, then it is your duty to render a special verdict that the defendant is not guilty by reason of insanity. In that event the form of your verdict would be, "we, the Jury, find the deferdant not guilty by reason of insanity."

241 In the event the State has convinced you by the evidence beyond a reasonable doubt that the defendant is guilty of rape as charged in the indictment, and the defendant has not proved to your reasonable satisfaction his defense of insanity, the form of your verdict wil be, "we, the Jury, find the defendant guilty as charged and fix his punishment at death," or, "We, the Jury, find the defendant guilty as charged and fix his punishment at (so many) years in the penitentiary," the number of years not being less than ten.

If you are not convinced by the evidence beyond all reasonable doubt and to a moral certainty that the defendant is guilty of rape, but you are convinced from the evidence beyond all reasonable doubt and to a moral certainty that the defendant is guilty of an assault with intent to ravish, and the defendant has not proved to your reasonable satisfaction his defense of insanity, your verdict will be in this form, "We, the Jury, find the defendant guilty of an assault with intent to ravish." Under that verdict you do not decide the punishment. That is entirely for the Court. You only fix the punishment if you find the defendant guilty of rape itself.

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If you are not convinced by the evidence beyond all reasonable doubt and to a moral certainty that the defendant is guilty of rape, or an assault with intent to ravish, but you are convinced from the evidence beyond all reasonable doubt and to a moral certainty that the defendant is guilty of an assault or an assault and battery, and the defendant has not proved to your reasonable satisfaction his defense of insanity, your verdict will be, "We, the Jury, find the defendant guilty of an assault (or an assault and battery) and fix his fine at (so many) dollars, not more than $500, or decline to assess a fine." In which event, if the Jury declines to assess a fine, it becomes the Court's duty to impose a hard labor sentence not exceeding six months by imprisonment in the County Jail.

Now, members of the Jury, any verdict you reach in this case must be a unanimous verdict, all twelve of you must agree upon that verdict. You take this case and deliberate upon it. As I told you before, bring to it everything you can in the way of fairness and impartiality, consider it fairly from the evidence coming from that stand as to the offense charged in this indictment, nothing
242 else. Designate one of your number as foreman, and let whatever verdict you render be written on the back of the indictment, and then I will ask that it be signed by one of your number as foreman. I have prepared a number of forms of verdict which I will give you to take into the room with you, to aid you in writing on the back of the indictment whatever verdict you reach. These are the possible verdicts that may be returned in the case.

Is the defense satisfied?

Mr. McGee: Yes.

The Court: Is the State satisfied?

(Side bar conference between the Court and counsel, not requested to be taken by the Reporter.)

The Court: Now, Gentlemen of the Jury, at the request of the defendant, as he has a right to do, he has requested certain written charges as to the law. They are principles of law which are not inconsistent with anything I have told you in the oral charge. They are to be considered by you in your consideration of the charge.

"The Court charges you, gentlemen of the jury, that a person charged with a felony should not be convicted unless the evidence excludes to a moral certainty every reasonable hypothesis but of the defendant's guilt; no matter how strong the circumstances are they do not come up to the full measure of proof which the law requires if they can be reasonably reconciled with the theory that the defendant was innocent."

"The humane provision of the law is, that upon circumstantial evidence there should not be a conviction unless to a moral certainty

it excludes every other reasonable hypothesis than that of the guilt of the accused. No matter how strong may be the circumstances, if they can be reconciled with the theory that some other person may have done the act, then the guilt of the accused is not shown by that full measure of proof the law requires."

"If the facts, no matter how strong, can be reconciled with the theory that another may have committed the crime, the accused should be acquitted."

"Gentlemen of the Jury, unless the evidence against the prisoner should be such as to exclude to a moral certainty every hypothesis but that of his guilt of the offense imputed to him, you must find the defendant not guilty."

243 "I charge you, gentlemen of the jury, that you are authorized to take into consideration any pecuniary interest any witness may have in the result of your verdict, as to what weight you will give the testimony of such witness."

"If there is a conflict in the testimony of the witnesses offered by the State, and those offered by the defendant, the Jury must determine which of said witnesses they will believe; and in determining what weight they will attach to the testimony of any particular witness, they may look to the manner of such witness on the stand, and to his interest and feeling (if any) in the case, and as to whether or not he has been contradicted by other witnesses in the cause, or by his own previous statements."

"If any of the State's witnesses have exhibited malice against the defendant or anger, or have testified to contradictory statements and thereby satisfied the Jury that they have not testified truly, and are not worthy of belief, and the Jury think their testimony on these accounts should be discarded, they may discard it altogether."

"The Court charges you, gentlemen of the jury, that if any of the State witnesses have exhibited bias against the defendant, or anger, and satisfied you that they had not testified truly, and were not worthy of belief, and you thought their testimony should be disregarded, you may disregard it altogether."

"A well settled rule of law that if there be two reasonable constructions which can be given to facts proven, one favorable and the other unfavorable to the defendant, it is the duty of the Jury to give that which is favorable, rather than that which is unfavorable, to the accused."

"The Court charges you, gentlemen of the jury, the law says that it is far better that the guilty should go unwhipped of justice than that the innocent should be punished."

"The Court charges that if the State's witnesses have exhibited prejudice or anger against the defendant, and satisfied you that they have not testified truly and are not worthy of belief, and y..u think their testimony should be disregarded, you may disregard it altogether."

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"The Court charges that, if there is a probability of defendant's innocence, you should acquit him."

244 "You may consider the pecuniary interest that any witness may have in the result of your verdict in weighing the testimony of such witness."

"The Court charges the Jury that if they find, from the evidence, that Mrs. Ann Crowder, has made contradictive statements as to the material facts in the case, or to any of such facts the Jury may look to such contradictory statements in determining what credence it will give to the testimony of Mrs. Ann Crowder."

"If any witness testifying has been impeached, then the Jury may disregard his testimony, unless his testimony be corroborated by other testimony."

Gentlemen of the Jury, take the case, consider it, and arrive at a verdict. As I have told you, it must be a unanimous verdict. Write the form of your verdict on the back of the indictment and have it signed by one of your number as foreman. I will give you all possible forms of verdict that could be rendered in the case.

Gentlemen, take the case.

12:11 o'clock P. M. The Jury retired to the Jury room to deliberate.

12:45 o'clock P. M.

Present:

The Court.
The Jury.
The Solicitor and Assistant Solicitor.
The defendant and his counsel.

VERDICT

The COURT: Gentlemen of the Jury, have you agreed upon a verdict:

A JUROR: We have.

The COURT: Let the Clerk read the verdict.

The CLERK: "We, the Jury, find the defendant guilty as charged and fix his punishment at death."

245 The COURT: Let the record show all twelve of the jurors separately and severally and individually acknowledge this as their verdict.

246 IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
NOVEMBER TERM, 1952

No. 5121

STATE OF ALABAMA

vs.

JEREMIAH REEVES, JUNIOR

OFFENSE—RAPE

West Court Room, Court House, Montgomery, Alabama, Wednesday, December 3rd, 1952, 9 o'clock A. M.

Present: Hon. James J. Carter, Special Judge. William F. Thetford, Esq., Circuit Solicitor. John N. McGee, Jr., Esq., for the defendant. Jeremiah Reeves, Junior, the defendant.

THE COURT: Bring Jeremiah Reeves to the bar.

Jeremiah Reeves, you have been tried by a Jury and found guilty of rape and punishment fixed at death. The judgment of the Court is that you are guilty. Have you anything to say at this time as to why the sentence of the law should not now be pronounced upon you?

THE DEFENDANT: No, sir.

THE COURT: It is, therefore, considered and ordered by the Court, and it is the judgment and sentence of the Court, that the Sheriff of Montgomery County shall remove the said defendant, JEREMIAH REEVES, JUNIOR, forthwith to Kilby Prison at Montgomery, Alabama, where the said JEREMIAH REEVES, JUNIOR, shall remain in custody until the 23rd day of January, 1953, and on said day in strict accordance with the law the Warden of Kilby Prison at Montgomery, Alabama, or such other person as may be authorized by law, shall put the said JEREMIAH REEVES, JUNIOR, to death by causing to pass through the body of the said JEREMIAH REEVES, JUNIOR, a current of electricity of sufficient intensity to cause the death of the said JEREMIAH REEVES, JUNIOR, and that the application and continuance of such current of electricity to pass through the body of said JEREMIAH REEVES, JUNIOR, until he, the said JEREMIAH REEVES, JUNIOR, is dead.

247-254 And it is further ordered by the Court that the Clerk of this Court will issue the necessary warrant for the execution of the said JEREMIAH REEVES, JUNIOR, as required by law.

The defendant appeals from the judgment of the Court and questions of law arising in this case for the decision of the Supreme Court of Alabama.

It is further ordered by the Court that pending said appeal to the

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Supreme Court of Alabama, the said defendant, JEREMIAH REEVES, JUNIOR, be confined in Kilby Prison pending said appeal to the Supreme Court.

It is so ordered.

Mr. McGEE: I would like to sign a pauper's oath.

The COURT: I can go ahead and enter an order at this time if you do so move. I think that is in accordance with the law, and we can definitely know whether a transcript will be ordered for him.

The Court stands adjourned at this time. (9:05 o'clock A. M.)

255 IN THE SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OF SUPREME COURT PASSING CAUSE TO CALL OF 8TH DIVISION —May 14, 1953

IT IS ORDERED that this cause be and the same is hereby passed to the Call of the 8th Division, to-wit: Thursday, May 21, 1953.

256 ARGUMENT AND SUBMISSION—May 21, 1953

(Omitted in printing)

257 [File endorsement omitted]

In the Supreme Court of Alabama

The State of Alabama—Judicial Department
Special Term 1953

3 Div. 663

JEREMIAH REEVES, JR.

v.

STATE OF ALABAMA

Appeal from Montgomery Circuit Court

OPINION—Filed August 6, 1953

MERRILL, *Justice:*

Appellant, Jeremiah Reeves, Jr., age seventeen years, was indicted for rape by a grand jury of Montgomery County. Upon trial, the jury found him guilty and imposed the death penalty. Judgment

and sentence were in accord with the verdict. After his motion for a new trial was overruled, he brought this appeal.

There is no reason to make a detailed statement of the evidence. The following summary will suffice.

The prosecutrix, a white woman, testified that about 12:15 P. M. on July 28, 1952, a negro male entered her home and forcibly ravished her, beat her about the head, took some money and departed. A neighbor testified that the prosecutrix came to her house about 12:40 P. M. in a state of shock and hysteria; that she was badly bruised and bleeding and asked her to report the attack to the police. The testimony of two doctors who treated her that day tended to support her claim that she had been ravished. Reeves was arrested Monday, November 10, 1952 at 2:10 P. M. On Wednesday morning prosecutrix identified him at Montgomery Police Headquarters.

258 On the trial a witness for the State testified that he saw defendant running along a street about two blocks from where prosecutrix lived; that he picked him up in his automobile a short time before one o'clock P. M. and carried him six or seven blocks. The defendant offered some testimony that he was insane, some as to his good character, denied his guilt and claimed certain statements he had made were the result of coercion and promises. He sought to prove an alibi, that he was present where a group of people were playing dominoes, and this claim was supported by the testimony of one witness. Certain parts of the evidence will be more fully developed in the discussion of the matters raised in appellant's brief.

Counsel for defendant argue many points in brief and we consider them as they are raised, numbering them for convenience.

1. Defendant was denied due process because he was arraigned on the day following the return of three indictments against him by the grand jury and required to plead to same when no copies had been served on him.

The indictment was returned on November 14, 1952 and defendant was arraigned November 15th. A copy of the indictment and venire was served on him on November 17th. Our statute requires that the venire and a copy of the indictment be served on the defendant in a capital case at least one entire day before the day set for trial, and that is all the notice to which he is entitled.—Title 30, section 63, Code. In the instant case the trial was set for November 26th. "The law neither requires that a defendant in a criminal case shall have previous notice of the indictment nor a copy of it previous to his arraignment."—*Dix* v. *State*, 147 Ala. 70, 41 So. 924. The defendant pleaded not guilty and not guilty by reason of insanity. The record shows the arraignment to be regular in all respects.

2. Local Act No. 118, 1939 Local Acts of Alabama establishing

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the jury commission of Montgomery County violates section 105 of the Constitution, and the jury commission is without legal authority.

The local act referred to provides that the jury commission of Montgomery County shall be composed of the circuit judges, the judge of probate, the sheriff and the clerk of the circuit court. This act is not violative of section 105 of the Constitution on authority of *State, ex rel. Brandon* v. *Prince,* 199 Ala. 444, 74 So. 939. In that case a local act which provided that the members of the board
259 of revenue of Tuscaloosa County should constitute the jury commission was held not to violate section 105 of the Constitution.

3. That negroes are systematically excluded from jury service by the jury commission.

The defendant filed a motion to quash both the indictment by the grand jury and the petit jury panel on the ground that negroes have been systematically excluded from the jury rolls. Circuit Judge Eugene W. Carter recused himself on the ground that he had become a witness in said cause and Mr. James J. Carter was appointed special judge to try the case.

Circuit Judge Eugene W. Carter and Circuit Clerk John R. Matthews were called as witnesses for the defendant to testify in support of his motion to quash; Circuit Judge Walter B. Jones, James E. Pierce, a negro school teacher, and D. Caffey, a negro real estate dealer, were called as witnesses for the State. The testimony of the jury commissioners showed that there was no discrimination as to race or creed and that both races were represented on the panel to try the instant case. The negro witnesses testified that they had been previously called for jury duty, one having served at least six times, and that they had been requested to furnish names of negro citizens to the jury commission. Title 30, section 20, Code, requires the names of jurors to be printed on plain white cards all of the same size and texture and printed thereon the name, occupation, place of residence and place of business of the juror. Neither the card nor the actual jury list shows the race of the juror. Defendant showed none of the circumstances to be present which were the basis of the holding in the case of *Avery* v. *Georgia,* United States Supreme Court No. 648, May 25, 1953, nor anything in conflict with our holding in *Vaughan* v. *State,* 235 Ala. 80, 177 So. 553. There was no evidence to sustain defendant's motion and it was properly overruled by the Court.

4-10. These propositions are concerned with the contentions that Special Judge James J. Carter was without authority to act, and that he did not receive the consent of the defendant as required by section 160 of the Constitution and section 125 of Title 13, Code.

The following is quoted from the record and comes immediately

after the recording of the announcement of Judge Eugene W. Carter that he would recuse himself:

"The defendant's attorney and the solicitor were called to the bar in the presence of the defendant, and they stated
260 that the State of Alabama and the defendant has agreed that the Hon. James J. Carter be appointed as Special Judge in the trial of said cause, in accordance with section 124, Title 13 of the 1940 Code of Alabama. The said James J. Carter was called to the bench and was informed of the agreement that he serve as Special Judge in the case, and asked if he would serve. He stated in addition to agreement of counsel he would prefer to have an appointment by the Governor of Alabama to make it doubly sure that no objection be made to his appointment as Special Judge. The defendant's attorney, in the presence of the defendant, stated that at no time would he make any objection to the appointment of James J. Carter as Special Judge.

"Hon. Eugene W. Carter, presiding, thereupon recused himself from sitting at said trial; and the case was then continued for trial until November 28th, 1952."

The defendant offered no evidence at any time to show that the above statement in the record is incorrect.

The Governor of Alabama did appoint James J. Carter as Special Judge to hear the case, and defendant's attorney agreed and stated he had no objection thereto.

The statutory grounds of disqualification of a judge, section 6, Title 13, Code, are not exclusive so as to eliminate grounds for disqualification under the common law.—*Ex parte Benson*, 254 Ala. 47, 47 So. 2d 180. Judge Eugene W. Carter was eminently correct when he recused himself on the ground that he had become a witness. The rule is stated in 48 Corpus Juris Secundum 1068, Judges, section 83 (b): "A trial judge should not preside in a case in which he is a material and necessary witness."

11. Defendant was denied due process of law and denied his constitutional rights because the assistance of a private stenographer was denied his counsel.

On the morning of November 26th, prior to Judge Eugene W. Carter recusing himself, he had ruled that only officials of the court, witnesses and relations of the accused could remain in the court room. Defendant's counsel stated that Mr. Ira Fred Watson, a private stenographer, was supposed to be present and he wanted Mr. Watson to assist him in the trial. The solicitor objected on the ground that Mr. Watson was not a court official and the court denied counsel's request. However on November 28th, prior to the noon recess and prior to the taking of the testimony of the State's first witness at

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two o'clock P. M., Special Judge James J. Carter presiding, the following took place:

"The COURT: What about your motion to have a stenographer assist you? You may have one if you like.

"Mr. MCGEE: I will not press that. I cannot locate him now."

261 12-13. Inculpatory admissions or admissions in the nature of confessions or a confession of actual guilt by defendant were admitted into evidence although defendant offered to show that a previous confession had been obtained from him based on the promise that the only way to keep out of the electric chair was to confess this and another criminal assault.

Certain statements made by defendant to the prosecutrix and a psychiatrist were admitted in evidence. The defendant objected and offered to show that defendant had confessed that he had committed this and other offenses after he had been taken into the room at Kilby prison where the electric chair is located and there told by the deputy warden of the prison that the only way to keep out of the electric chair was to say that he committed the offense. No such alleged confession was ever offered or introduced in evidence. The court permitted the defendant to testify to the above mentioned conversation with the deputy warden but would not allow the particulars of the alleged confession to be given in evidence because no confession made at Kilby prison had been introduced.

The defendant contends that the rule in *Huntley* v. *State*, 250 Ala. 303, 34 So. 2d 216, applies, the rule being:

> "Where a confession has been obtained, or inducement held out, under circumstances which would render a confession inadmissible, a confession subsequently made is not admissible unless, from proper warning of the consequences, or from other circumstances, there is reason to presume the hope or fear which influenced the first confession is disspelled, and in absence of any such circumstances influence of the motives proved to have been offered will be presumed to continue, and to have produced the confession unless the contrary is shown by clear evidence.

We come now to the consideration of defendant's statements which were admitted in evidence.

The prosecutrix testified that after the assault she next saw defendant at police headquarters in Montgomery on Wednesday, November 12th, that she identified him and a few minutes later talked with him in the presence of two other women, a Lieut. Miller and other policemen in the room. A proper predicate was laid for

the introduction of the conversation and defendant objected by written motion. The jury was excluded and defendant was permitted to examine prosecutrix as to what happened in her presence. After hearing the evidence, the court ruled the statement was voluntary; the jury was recalled and the following took place:

262 "Q. I am going to ask you the question over again. The question I asked was this. Did he make any statement to you at police headquarters on the 12th, Wednesday, the 12th of November? Did you have a conversation with him?

"A. Yes, sir; I did.

"Q. I would like you to tell the jury what conversation you had with him, who asked the first question, what the reply was, as best you remember.

"A. I asked the first question.

"Q. What was the question, what did you ask him?

"A. 'Why did you do it?' And to that he just shook his head, and later he said, 'I don't know.'

"Q. Did he deny he raped you?

"A. No, he did not.

"Q. Did he recognize you?

"A. Yes.

"MR. MCGEE: I object.

"By the SOLICITOR:

"Q. Let me put it this way. Did he say anything that would show he recognized you?

"A. Yes, he did.

"Q. What did he say?

"A. He was asked which house was I in—where do you remember her from?' And he told them, 'Cleveland Avenue, the first one.'

"Q. 'Cleveland Avenue, the first one'?

"A. Yes.

"Q. He said that to you at that time?

"A. He was speaking to someone else, but I was in the room.

"Q. Did you have any other conversation with him yourself?

"A. Yes. I asked him by which door he entered the house, and he said he entered by the back door.

"Q. I want you to look at this defendant. Now, do you positively identify him as the man who raped you?

"A. Yes."

While these statements of defendant are not direct confessions of guilt, we think they are inculpatory admissions in the nature of a confession—that is, directly relating to the fact or circumstances of

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the crime and connecting the defendant therewith, and as such are subject to the same rules of admissibility as direct confessions, and are therefore prima facie involuntary and inadmissible. *McGehee* v. *State*, 171 Ala. 19, 55 So. 159; *Herring* v. *State*, 242 Ala. 85, 5 So. 2d 104; *Tillison* v. *State*, 248 Ala. 199, 27 So. 2d 43. They therefore require a predicate showing that they were voluntary.

263 Another witness testified to a confession of defendant. The admission of this testimony was not discussed in appellant's brief but it is our duty to consider it under the automatic appeal statute.—Section 382 (1), 382 (13), Title 15, Code 1940, Pocket Part. During the cross examination of defendant he both denied and admitted telling Dr. Bazar, a Montgomery psychiatrist, that he had raped prosecutrix. On rebuttal by the State, Dr. Bazar testified that he had examined the defendant on November 13th and November 20th for approximately two and a half hours each time, seeking to determine the sanity of the accused. After a proper predicate had been laid and the court had offered to allow defendant to present any evidence showing that anyone at that time used any coercion or force on him, Dr. Bazar testified that the defendant told him that he had raped the prosecutrix. He also testified that in his judgment defendant was sane.

As we have already observed, the court went into the matter of the voluntariness of these statements out of the presence of the jury and held them to be voluntary. This Court said in the case of *Dennison* v. *State*, 5 Div. 550, Supreme Court, MS: "The duty, as we have said so many times, of determining the voluntariness *vel non* of a confession so as to authorize its admissibility is addressed to the trial court in the exercise of an enlightened discretion," and in *Fewell* v. *State*, 6 Div. 483, Supreme Court, MS, we find this statement: "This Court has held that the court's decision allowing a confession in evidence will not be disturbed unless it appears that it is palpably contrary to the great weight of the evidence.—Vernon v. State, 239 Ala. 593, 196 So. 96." The court charged the jury on this point as follows:

> "Now, as to any statement, or alleged confession or admission which may have been made, the weight of such a statement or admission is for you and you alone, and you are to determine the weight and credibility of the evidence here in the light of the circumstances that were existing at the time such statement was given."

The defendant was questioned from 2:10 P. M. to 7:30 P. M. Monday, most of the day Tuesday and part of the forenoon on Wednesday. He did not claim any physical violence or threat of it to procure any statement from him.

We come now to the question of the psychological coercion. Un-

der defendant's own description of his interrogation it was not shown that he was deprived of refreshment, rest or relief or that it was so prolonged and unremitting as to accomplish extortion of an involuntary confession. There was no evidence or claim of the
264 employment of the "relay technique".

It is not disputed that defendant was held incommunicado until the afternoon of November 12th, but there is no claim made that he was *illegally* detained. The Supreme Court of the United States has held that the requirements of the Fourteenth Amendment do not "impose rules of evidence on state courts which bind them to exclude a confession because, without coercion, it was obtained while a prisoner was uncounseled and illegally detained.—*Stroble* v. *California*, 343 U. S. 181, 197; *Lisbena* v. *California*, 314 U. S. 219."—*Stein* v. *New York*, U. S. Supreme Court No. 391, June 15, 1953.

At this point we should recall that although defendant testified that he had been told if he would admit having raped the prosecutrix that would keep him out of the electric chair, there was no evidence of a confession on direct testimony offered by the State. That came only on rebuttal from Dr. Bazar after the defendant had been questioned about his conversation with Dr. Bazar and the proper predicate had been laid as to the voluntariness of the statement. The inculpatory admissions made to the prosecutrix did come on direct presentation of the State's evidence. In considering all the evidence, especially the fact that the solicitor told the defendant on the afternoon of November 11th (Tuesday) that he could make him no promises and the law would have to take its course, and that there is no claim of coercion or promises made to defendant when he had the conversation with the prosecutrix Wednesday at police headquarters and the finding of the Court, after taking evidence, that the statements were voluntary, we cannot say that the admission of these statements was reversible error. Moreover, the admissions to the prosecutrix and the confession to Dr. Bazar did not form the basis of a conviction. The State had established the identity of this defendant as the perpetrator of the crime by very convincing proof "and the matter of confession was but cumulative and approached what might properly be termed supererogation," *Johnson* v. *State*, 242 Ala. 278, 5 So. 2d 632, cert. denied 316 U. S. 693, 713, or as stated in *Stein* v. *New York*, *supra*, "Here the evidence of guilt * * * is enough apart from the confessions so that it could not be held constitutionally or legally insufficient to warrant the jury verdict".

14. After the testimony closed defendant moved for a mistrial on the ground that counsel had just learned that one juror was chief of the Montgomery Reserve Police Force, organized for the purpose of tracking down rapists and burglars.

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265 This motion was denied by the court on the ground that each juror had been qualified separately and individually and the juror had not been disqualified. Counsel for defendant then asked to be allowed to question the juror himself. This request was properly refused by the court under the rule of *Vernon* v. *State*, 239 Ala. 593, 196 So. 96, and *Ball* v. *State*, 252 Ala. 686, 42 So. 2d 626, that "objections going to the venire of the petit jury or any member thereof, must be made before entering upon the trial of the case on its merits under the defendant's plea of not guilty, and a failure to make such objections constitutes a waiver.—Peterson v. State, 227 Ala. 361, 150 So. 156." See also *Shepherd* v. *Kendrick*, 245 Ala. 541, 17 So. 2d 763; *Batson* v. *State*, 216 Ala. 275, 113 So. 300.

15. The expression of an opinion by the trial judge as to a fact in issue was reversible error.

During the trial defendant's counsel was referring to the conversation of the prosecutrix with the defendant and the court stated that it had already held that statement to be admissible as being voluntary. Counsel for defendant moved for a mistrial which was overruled and the court made this statement to the jury:

> "I want to explain the ruling of the court just given. The credibility of a statement given by a witness is simply for the jury; the court has no opinion at all, and expresses none on the record."

It is clear that the remark of the trial judge that he had previously held the statements to be "voluntary" did not injuriously affect the substantial rights of the defendant or make any intimation which tended to prejudice the defendant's case before the jury. The cases of *Pate* v. *State*, 19 Ala. App. 243, 96 So. 649, and *Hair* v. *Little*, 28 Ala. 236, cited by defendant, are not applicable here.

16. The evidence is insufficient to support a conviction of rape. The evidence was not only sufficient to take the case to the jury on the charge of rape, but was amply sufficient to support the verdict of the jury.

On the whole evidence with respect to the inculpatory admissions to the prosecutrix and the confession to the doctor, there is nothing to show that the trial court's action in admitting them was manifestly wrong or that defendant's rights under the Federal Constitution were infringed.—*Phillips* v. *State*, 248 Ala. 510, 28 So. 2d 542; *Peoples* v. *State*, 256 Ala. 612, 56 So. 2d 665; *Thomas* v. *State*, 257 Ala. 124, 57 So. 2d 625; *Lyons* v. *Oklahoma*, 322
266 U. S. 596; *Stroble* v. *California*, 343 U. S. 181; *Stein* v. *New York*, *supra*.

In accordance with our duty in cases of this character, we have examined the record for any reversible error, whether pressed upon

our attention or not. We have dealt herein with all questions calling for treatment. We find no reversible error in the record and the cause is due to be and is affirmed.

Affirmed.

All the Justices concur.

267 In the Supreme Court of Alabama

The Court met pursuant to adjournment.

Present: Chief Justice Livingston and Associate Justices Lawson, Simpson, Stakely, Goodwyn, and Merrill.

Montgomery Circuit Court

No. 5121

(Electrocution)

3 Div. 663

JEREMIAH REEVES, JUNIOR

v.

THE STATE OF ALABAMA

JUDGMENT—August 6, 1953

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It is therefore considered, ordered, and adjudged that the judgment of the Circuit Court be in all things affirmed.

The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoner, Jeremiah Reeves, Junior, having expired pending this appeal, it is now ordered that Friday, September 18, 1953, be and the same is hereby fixed as the date for execution of the Defendant, Jeremiah Reeves, Junior.

It is further ordered that the Sheriff of Montgomery County, Alabama, deliver the Defendant, Jeremiah Reeves, Junior, to the Warden of Kilby Prison at Montgomery, in Montgomery County, Alabama, and that the said Warden at Kilby Prison in Montgomery County, Alabama, execute the judgment and sentence of the law on Friday, September 18, 1953, before the hour of sunrise on said date in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of the said Jeremiah

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Reeves, Junior, until he is dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered, ordered, and adjudged that the appellant, Jeremiah Reeves, Junior, pay the costs of appeal of this Court and of the Circuit Court, for which costs let execution issue accordingly.

(Opinion by Merrill, J. All the Justices concur.)

268 [File endorsement omitted]

In the Supreme Court of Alabama

[Title omitted]

MOTION FOR REHEARING—Filed August 21, 1953

Comes now the Appellant in the above styled cause and moves The Honorable Court to set aside the affirmation of the verdict and judgment of The Lower Court and to grant unto the Appellant a rehearing, and Appellant assigns the following grounds separately and severally for this motion:

1. For that The Honorable Court erred in sustaining the action of the Regular Judge in recusing himself after making certain preliminary orders, including setting a day for trial, determining the number of special jurors to be drawn, and drawing the said special jurors.

2. For that The Honorable Court erred in upholding the admission of the alleged inculpatory admission in the nature of a confession made to the prosecutrix and the alleged confesison made to Dr. Bazar.

3. For that The Honorable Court erred in upholding the action of The Lower Court which forced the Defendant to trial without an opportunity for preliminary pleadings.

4. For that The Honorable Court erred in upholding the validity of the acts of The Special Judge.

5. For that The Honorable Court erred in declaring the Jury System of Montgomery County to be constitutional.

6. For that The Honorable Court erred in upholding the action of The Special Judge which denied Defendant the right to testify upon the preliminary inquiry as to the admissibility of the alleged inculpatory admission made to prosecutrix.

7. For that The Honorable Court erred in declaring the evidence in the instant case to be sufficient to support the conviction.

VIRGIL MCGEE,
JOHN N. MCGEE, JR.,
HENRY HELLAR,
Attorneys for Defendant.

269 In the Supreme Court of Alabama

CERTIFICATE RECALLING CERTIFICATE OF AFFIRMANCE AND COPY OF OPINION PENDING CONSIDERATION OF THE APPLICATION FOR REHEARING—August 21, 1953

To the Clerk of the Circuit Court of Montgomery County, Greeting:

Whereas, in the matter of Jeremiah Reeves, Junior, Appellant, vs. The State of Alabama, Appellee, recently pending in the Supreme Court of Alabama, on appeal from the said Circuit Court of Montgomery County, our Supreme Court did on the 6th day of August, 1953 render a Judgment of Affirmance in said cause; and,

Whereas, a certificate of such action of the Supreme Court was duly issued to you, and thereafter an application for rehearing of said cause was filed in this Court by the Appellant on August 21, 1953;

Now, it is hereby certified, that our Supreme Court, or one of the Justices thereof, did, on the 21st day of August, 1953, order that the said certificate be recalled. And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Capitol, this 21st day of August, 1953.

J. RENDER THOMAS,
Clerk of the Supreme Court of Alabama.

August 26, 1953. Certificate of affirmance and copy of opinion returned to Supreme Court pending consideration of appellant's application for rehearing.

270 In the Supreme Court of Alabama

[Title omitted]

ORDER OVERRULING APPELLANT'S APPLICATION FOR REHEARING ETC. —November 27, 1953

It is ordered that the application for rehearing filed by the appellant in this cause on August 21st, 1953, after being duly examined and considered by the Court, be and the same is hereby overruled.

The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoner, Jeremiah Reeves, Junior, having expired pending this appeal, as shown by the former Order of this Court, and the time heretofore fixed by the order, judgment and sentence of the Supreme Court of Alabama for the execution of the prisoner, Jeremiah Reeves, Junior, having expired pending consideration of the application for rehearing,

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It is now ordered that Friday, January 22nd, 1954, be fixed as the date for the execution of the Defendant, Jeremiah Reeves, Junior.

It is therefore ordered that the Sheriff of Montgomery County, Alabama, deliver the Defendant, Jeremiah Reeves, Junior, to the Warden of Kilby Prison at Montgomery, in Montgomery County, Alabama, and that the said Warden of Kilby Prison, in Montgomery County, Alabama, execute the order, judgment and sentence of the law on Friday, January 22nd, 1954, on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of the said Jeremiah Reeves, Junior, until he is dead, and in so doing he will follow the rules prescribed by the Statutes.

It is also considered, ordered, and adjudged that the Appellant pay the costs of appeal of this Court and of the Circuit Court, for which costs let execution issue accordingly.

(All the Justices concur.)

271 In the Supreme Court of Alabama

[Title omitted]

PETITION FOR STAY OF EXECUTION PENDING PETITION FOR CERTIORARI

Comes now the appellant in the above-styled cause and petitions the Honorable Court to suspend execution of the sentence in the above case and to stay execution of the Death Sentence heretofore set for January 22, 1954, and as grounds for his said petition appellant shows the Honorable Court the following:

1. That a Petition for a Writ of Certiorari is now being prepared for presentation to the Supreme Court of the United States asking that Honorable Court to review questions of Federal Consitutional Law which arose on the trial of the said case and on appeal of said case to this Honorable Court.

2. That execution of the sentence in this case should be suspended until the Supreme Court of the United States rules upon the said Petition for Writ of Certiorari.

(S.) VIRGIL MCGEE.
PETER A. HALL.
ORZELL BILLINGSLEY, JR.

Duly sworn to by Virgil McGee. Jurat omitted in printing.

272 IN THE SUPREME COURT OF ALABAMA

[Title omitted]

ORDER GRANTING PETITION FOR STAY OF EXECUTION PENDING PETITION FOR CERTIORARI—January 14, 1954

WHEREAS, the Judgment of the Circuit Court of Montgomery County, Alabama, in the case of *Jeremiah Reeves, Junior, Appellant*, v. *The State of Alabama, Appellee, 3 Div. No. 663*, was affirmed by this Court on the 6th day of August, 1953, and the date of the execution of the sentence of the Circuit Court was reset and fixed by this Court and the said Jeremiah Reeves, Junior, was ordered to be electrocuted on Friday, September 18, 1953; and,

WHEREAS, the said Jeremiah Reeves, Junior, thereafter filed an application for rehearing on the 21st day of August, 1953, which said application for rehearing was overruled by this Court on the 27th day of November, 1953, and the date of execution of the Supreme Court of Alabama was reset and fixed by this Court for Friday, January 22, 1954; and,

WHEREAS, the said Jeremiah Reeves, Junior, by his Attorneys, has petitioned this Court for a suspension and stay of the execution of said sentence, in order to give sufficient time to petition the Supreme Court of the United States for a Writ of Certiorari to be directed to this Court for a hearing of said cause in the Supreme Court of the United States, or to perfect an appeal of said cause to the Supreme Court of the United States.

NOW, THEREFORE, IT IS ORDERED on petition of the Defendant, Jeremiah Reeves, Junior, that the date of the execution of the death sentence heretofore entered in this cause for Friday, January 22nd, 1954, be and the same is hereby reset and fixed for Friday, March 26th, 1954, and the sentence of the Court will, on said date,
273 be carried out in all respects according to the law of this State.

IT IS FURTHER ORDERED that until final execution of the sentence of the Court, jurisdiction is hereby retained over said cause.

IT IS FURTHER ORDERED that the Sheriff of Montgomery County, Alabama, deliver the Defendant (Appellant) Jeremiah Reeves, Junior, to the Warden of Kilby Prison at Montgomery, Alabama, and that the said Warden of Kilby Prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday, March 26, 1954, on said day in said prison by causing a current of electricity of sufficient intensity to cause death to pass through the body of the said Jeremiah Reeves, Junior, until he is dead, and in so doing he will follow the rules prescribed by the Statutes.

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It Is Also Considered that the Appellant pay the costs of appeal of this Court and of the Circuit Court.

(All the Justices concur.)

274 (Clerk's Certificate to foregoing transcript omitted in printing.)

275-276 Supreme Court of The United States, October Term, 1953

No. —

Jeremiah Reeves, Jr., petitioner

v.

State of Alabama

Order Extending Time to File Petition for Writ of Certiorari —February 17, 1954

Upon Consideration of the application of counsel for petitioner, It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby extended to and including March 12th, 1954.

Earl Warren,
Chief Justice of the United States.

Dated this 17th day of February, 1954.

277-282 Petitioner's Designation of the Record—Filed July 21, 1954

[Omitted in printing]

283-287 Respondent's Cross Designation of the Record—Filed July 29, 1954

[Omitted in printing]

288-289 SUPREME COURT OF THE UNITED STATES

No. 481 Misc., October Term, 1953

[Title omitted]

ORDER GRANTING CERTIORARI—June 7, 1954

On petition for writ of Certiorari to the Supreme Court of the State of Alabama.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, and the case is transferred to the appellate docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

October Term, 1954
No. 120

JEREMIAH REEVES, JR.,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE PETITIONER

THURGOOD MARSHALL,
ROBERT L. CARTER,
JACK GREENBERG,
Counsel for Petitioner.

ELWOOD H. CHISOLM,
PETER A. HALL,
DAVID E. PINSKY,
LOUIS H. POLLAK,
of Counsel.

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I—A. Due process of law guaranteed by the Fourteenth Amendment was denied to petitioner—a little-educated, mentally unstable Negro youth—by introduction into evidence of his "confessions" and "inculpatory statements" made following sustained interrogation, punctuated by threats of electrocution, while he was held incommunicado at the State Penitentiary from Monday afternoon through Wednesday morning near and frequently in the very presence of the electric chair 18

B. Even if the confessions were not coerced as a matter of law, due process was denied in that the confession issue was not "fairly tried and reviewed": The jury which heard the confessions was not permitted to hear the relevant and important testimony offered by petitioner concerning their exaction 24

C. The Supreme Court of Alabama erred in holding that even if the confessions were coerced, the decision in *Stein* v. *New York*, 346 U. S. 156 permitted affirmance because there was sufficient evidence apart from the confessions upon which the conviction could have been based 29

II—There was systematic exclusion of Negroes from the venire in that the commissioners employed a selection method whereby it was "particularly hard" for Negroes to become jurors if the commissioners did not personally know them; commissioners knew fewer Negroes than whites; and although the Negro population of Montgomery County is 43.6%, panels contained only 0% to 8.5% Negroes 33

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IN THE

Supreme Court of the United States

October Term, 1954

No. 120

JEREMIAH REEVES, JR.,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE PETITIONER

Opinion Below

The opinion of the Supreme Court of Alabama (R. 184) is reported at 68 So. 2d 14.

Jurisdiction

The judgment of the Superior Court of Montgomery County was affirmed by the Supreme Court of Alabama on August 6, 1953. Rehearing was denied November 27, 1953. Time for filing petition for writ of certiorari was extended to and including March 12, 1954 by order of the Chief Justice dated February 17, 1954. Petition for writ of certiorari and motion for leave to proceed in *forma pauperis* were granted on June 7, 1954. The printed record was received by

petitioner's counsel on August 17, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3), petitioner having asserted in the courts below rights, privileges and immunities conferred by the Constitution of the United States.

Questions Presented

I

A.

Whether due process of law guaranteed by the Fourteenth Amendment was denied petitioner—a little-educated, mentally unstable Negro youth—by introduction into evidence of his "confessions" and "inculpatory statements" made following sustained interrogation—punctuated by threats of electrocution—while he was held incommunicado at the State Penitentiary from Monday afternoon through Wednesday morning, near and frequently in the very presence of the electric chair.

B.

Whether, even if, *arguendo,* the confessions were not coerced as a matter of law, due process was denied in that the confession issue was not "fairly tried and reviewed", for the jury which heard the confessions was not permitted to hear the relevant and important testimony offered by petitioner concerning their exaction.

C.

Whether the Supreme Court of Alabama erred in proceeding on the premise that even if the confessions were coerced, it might properly, on the basis of *Stein* v. *New York,* 346 U. S. 156, affirm the judgment of the trial court because there was sufficient evidence apart from the confessions upon which the conviction could have been based.

II

Whether there was systematic exclusion of Negroes from the venire where there was a system of jury selection based entirely upon the jury commissoners' personal acquaintanceship; where they knew very few Negroes and it was "particularly hard" for Negroes to become jurors if the commissioners did not know them; and where jury panels contained only 0% to 8.5% Negroes in a county where the Negro population is 43.6%.

III

Whether due process was denied in that the general public was arbitrarily excluded from all phases of petitioner's trial—especially when this ban included a time when, as subsequent events proved, the public's presence was most necessary: during the *voir dire* when the Chief of Police of the Montgomery Reserve Police Force became a juror, after having concealed his police affiliation which was known to the State but unknown to petitioner.

Statutes Involved

Constitution of the United States—
14th Amendment.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 18 U. S. C. § 243.

Exclusion of jurors on account of race or color.—No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000. (June 25, 1948, c. 645, § 1, 62 Stat. 696.)

Ala. Const. of 1901 § 169.

In all prosecutions for rape and assault with intent to ravish, the court may, in its discretion, exclude from the courtroom all persons, except such as may be necessary in the conduct of the trial.

Title 15, Code of Ala. § 320 (1940).

Exclusion of public when evidence vulgar, etc.—In all prosecutions for rape and assault with intent to ravish, the court may, in its discretion, exclude from the courtroom all persons, except such as may be necessary in the conduct of the trial; and in all other cases where the evidence is vulgar, obscene, or relates to the improper acts of the sexes, and tends to debauch the morals of the young, the presiding judge shall have the right, by and with the consent and agreement of the defendant, in his discretion, and on his own motion, or on the motion of the plaintiffs or defendants, or their attorneys, to hear and try the said cause after clearing the courtroom of all or any portion of the audience whose presence is not necessary.

Statement

Petitioner has been sentenced to death following conviction for the crime of rape without recommendation of mercy (R. 184). The Supreme Court of Alabama has affirmed (R. 194).

I. Events Which Preceded The Trial

During the summer of 1952, there were a number of complaints of rape in Montgomery, Alabama (R. 44, 102, 104, 136). For a period of about six months the police were unable to charge anyone, even though several suspects were arrested (R. 66), including petitioner who was later released (R. 44-45, 104, 141). Petitioner is a 17-year-old Negro with an eighth grade education (R. 116), who comes from a poor family (R. 106-107) and who is mentally unstable (R. 105, 121-122, 124). Finally, on Monday, November 10, 1952, he was arrested once more (R. 135) and was taken out to Kilby prison (R. 137) near the City of Montgomery where he was held under circumstances to be detailed below until he "confessed". Wednesday morning, after his "confession", he was taken to the City Jail.

It appears that several women who had been raped or robbed were there to identify him and that four women other than prosecutrix herein failed to do so (R. 44, 139). Prosecutrix was told that petitioner confessed and was given a copy of a statement purportedly constituting such confession (R. 58, 64); thereupon she saw him, the only Negro in the room, through a window (R. 65), entered the room, and apparently identified him (R. 59).

In the presence of police officers a conversation ensued in which, according to prosecutrix, petitioner identified her house and described his entry (R. 59-60), but was unable to explain the reasons for his actions (R. 59). On Novem-

ber 14, petitioner was indicted for six crimes on six indictments, three of them capital (R. 1, 44)[1] among them was the indictment upon which the conviction herein is based.

II. Preliminary Motions

A. Exclusion of the Public

Trial commenced November 26, 1952 in Montgomery. At the outset, before motions were heard or the jury was empanelled the judge ordered the courtroom cleared of all persons except officials, jurors, and lawyers (R. 2, 10). Petitioner objected and moved that the public be permitted to attend (R. 2, 10, 19). He then moved that at least newspapermen (R. 3, 11) and his relatives (R. 3, 14-15, 19) be admitted. The motion as to relatives was granted (R. 3, 15); but that as to the press was at first denied (R. 3, 11). Subsequently the press was admitted to hear the actual taking of testimony (R. 22). Petitioner objected to these exclusions on the ground that he was thereby denied his right to a public trial as guaranteed by the Fourteenth Amendment (R. 10-11, 14-15, 19-20). Following these objections petitioner moved that if the public were to be excluded, it should be excluded *only* during prosecutrix's testimony on the ground that permanent exclusion from all phases of the trial denied due process of law as guaranteed by the United States Constitution (R. 15, 20). This motion was denied (R. 15). Thus, the general public was excluded prior to the empanelling of the jury and during the trial proper. Petitioner appealed this denial of a public trial to the Supreme Court of Ala-

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[1] At the time he went to trial he made a motion for continuance on the ground that he did not know for which of the three capital offenses he was going to be tried (R. 50). It was denied (R. 45).

bama, urging Federal Constitutional grounds. It ruled against him but did not discuss the question in its opinion.[2]

B. Motion to Quash the Venire

Petitioner moved to quash the venire on the ground that Negroes had been systematically excluded from the jury box in violation of the Fourteenth Amendment (R. 15, 20). The judge was also one of the jury commissioners, and therefore recused himself (R. 15-16). He was replaced by a Special Judge who tried the case from that point on (R. 21).

Evidence revealed that the jury box contained about five thousand cards (R. 38) bearing the names of all persons who had been called for jury service during at least the past 18 years (R. 30), excepting those who had become ineligible or died (R. 30). The commissioners did not known how many Negroes' names were in the box and would not estimate (R. 29, 39). However, one commissioner testified that the largest number of Negroes called at any term was three (R. 30). There have been panels with a smaller number of Negroes (R. 30, 34-35) and there have been terms with no Negroes at all (R. 35). A panel consists of 50 persons although only 35 may actually appear (R. 30). However, if there is a shortage of jurors, additional ones may be called (R. 30).

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[2] The Supreme Court of Alabama noted that the public had been excluded, but merely mentioned this in connection with petitioner's motion to have his private stenographer admitted to the courtroom, which was apparently held to have been waived at a later time because the stenographer could not be located (R. 188-189). The federal question was preserved in petitioner's brief in the Supreme Court of Alabama (see n. 5, *infra*), as follows:

"PROPOSITION XV

ARBITRARY EXCLUSION OF ALL MEMBERS OF THE PUBLIC WITHOUT CLASSIFICATION FROM ALL PHASES OF A RAPE TRIAL IS A DENIAL OF DUE PROCESS OF LAW UNDER THE 14TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES." (Brief of Appellant, In the Supreme Court of Alabama, *Reeves* v. *The State of Alabama*, p. 9.)

The commissioners selected jurors entirely from their personal acquaintance with individuals or organizations (R. 28-29, 36-37). They had obtained lists of names from almost every white club in the County (R. 33), but they knew few Negroes (R. 29, 37) and did not know or go to Negro clubs (R. 33, 36). Only one of them could recall a Negro organization which he had contacted, long ago in the past, and he was not sure of its name (R. 33-34). The Commissioners testified that they did not discriminate (R. 34), that they sought "high class" or "good" Negroes (R. 29, 36, 38) for jury service and never rejected a man because of his race (R. 29). There is testimony that several Negroes had been asked to submit names for the box (R. 36-37, 40, 42), although it does not appear that names ever were submitted by these persons (R. 36, 37, 40, 42), except on one occasion two or three years ago (R. 29), and that a public meeting was held at the start of World War II, attended by "high class" Negroes, and names were requested there (R. 38). Two Negroes testified that they had served on juries (R. 40, 41) and that other Negroes had served with them. However, one commissioner testified that it is "particularly hard" for Negroes to get on the jury without the commissioners knowing them (R. 29).

Petitioners moved on two occasions to examine the cards in the box to ascertain the number of Negroes who had been selected and to test the Commissioners' general assertions by cross-examination (R. 27, 34). Petitioner also sought to interrogate the commissioners concerning the voting list to ascertain whether it had been employed, as required by statute, in selecting jurors (R. 31, 39). These requests were denied (R. 27, 31, 34, 39). The trial court (R. 43) and the Supreme Court of Alabama (R. 187) concluded that there was no evidence to sustain petitioner's motion, and that there was therefore no violation of the Federal Constitution.

III. Testimony At The Trial

A. Commission of the Offense and Identification of Accused

Prosecutrix testified that her assailant entered her home July 28, compelled her to have intercourse (R. 52) and beat her unconscious (R. 62). She identified her assailant in most general terms as a Negro, seventeen to twenty-five years of age, five feet nine and a half to five feet ten inches in height, slightly taller than her husband, 130 to 150 pounds in weight (R. 62, 65), without a mustache (R. 65), wearing a dark blue shirt with a yellow-gold design and a straw hat (R. 52). Petitioner resembles even this general description only in that he is a Negro. There is uncontradicted testimony that he has always had a mustache since he was fourteen (R. 150, 151, 154, 155), that he has never owned the articles of clothing prosecutrix described (R. 107, 150), that he is five feet seven inches tall (R. 150) and that he was under seventeen at the time of the alleged offense (R. 135). The State seized all of petitioner's belongings (R. 102, 107) but produced no items of clothing like those prosecutrix described.

B. Inculpatory Statements and Confession: Testimony By Prosecutrix and Witness Clark

Prosecutrix testified concerning the statements made by petitioner to her at the City Jail (R. 59-60), and also testified that the solicitor had told her that petitioner confessed and that he showed her petitioner's confession (R. 58, 64-65). Petitioner objected to prosecutrix's testimony concerning the incriminating statements on the ground that they had been obtained by coercion which denied due process of law (R. 55-56, 58-59). A hearing was held without the presence of the jury in which petitioner sought to show that he had been held incommunicado at Kilby from 2:00 P. M. on Monday until Wednesday morning

when he confessed, at which time he was taken to the City Jail to be identified by prosecutrix. He sought to show that at Kilby he had been continuously questioned in the presence of the electric chair, had been kept in the room next to the electric chair, that he was offered the hope and promise that if he confessed he would not be electrocuted, but that if he did not confess he would be electrocuted. Petitioner also sought to introduce testimony concerning his age and education (R. 55-56, 58-59).

The judge held that the proffered testimony was inadmissible because it related to events up to the time that petitioner was taken to the City Jail to make the incriminating statements, but did not concern his treatment when he gave the statements at the City Jail (R. 58-59). Prosecutrix then proceeded with her testimony before the jury (R. 59-60, 64-65).

Witness Clark testified that not far from prosecutrix's home at the time of the offense he gave a ride to a person who fit prosecutrix's description of her assailant (R. 71-73) and that this person was petitioner. He then testified to an inculpatory statement petitioner made to him at the City Jail on November 17 (R. 74-75), in which petitioner purportedly recognized him and acknowledged that he had been Clark's passenger. Petitioner objected to the introduction of this statement on the ground that it was the product of the coercion used against him at Kilby (R. 74). The Court overruled the objection on the same ground that it overruled the earlier objection to the prosecutrix's testimony (R. 74), and refused to hear testimony on it.

C. Petitioner's Defense

Petitioner took the stand to deny that he committed the crime and to testify that he was playing dominoes at the time the offense was committed (R. 142-143). Another witness who participated in the domino game corroborated the alibi (R. 126-127). There was testimony that peti-

tioner did not fit the description given by prosecutrix (Compare R. 52, 62-65 with R. 106, 134, 150, 151, 154, 155). In the alternative there was a defense of insanity concerning which a series of lay witnesses testified that petitioner was mentally unstable and in their opinion insane (R. 105, 121-122, 124). There was also testimony of his good reputation (R. 152, R. Orig. 175, 200, 201, 202).[3]

1. *Petitioner's Attempt to Testify Concerning Exaction of Confession.*

Petitioner sought to testify during his own case concerning the treatment he received at Kilby before he confessed and made the incriminating statements in the presence of prosecutrix, witness Clark and the police (R. 138, 139-141).

After petitioner had testified briefly concerning occurrences at Kilby on Monday, the Court stopped him on the ground that the testimony was irrelevant (R. 138-139, 140-141). Petitioner, thereupon made the following proffer (R. 140):

> "Mr. McGee: To show the defendant, a seventeen year old negro boy, who quit school in the 8th grade, was arrested at approximately 2:10 P.M. on November 10th, 1952, and was carried within a period of about fifteen minutes from then to the State Penitentiary, Kilby Prison, Montgomery County, Alabama, where he was held incommunicado by State and City officers and questioned continuously the rest of the afternoon, and then permitted to sleep only a short while, some fifteen or twenty minutes; he was then carried into the next room where the electric chair was and questioned some more by the Deputy Warden O. R. Dees and accused of having

[3] R. Orig. indicates pages of the original record which were not printed.

made various kinds of attacks on some six white women of Montgomery County, Alabama. O. R. Dees further told him that if he didn't confess to these crimes that all the women would identify him and he was going to the electric chair. And that if he would confess that he would keep him out of the chair. After questioning him all night he was finally permitted to go to bed until the following morning, Tuesday. Tuesday morning early the officers again began a series of constant questioning all day Tuesday and part of Tuesday night. Then he was permitted to go to bed. That on Wednesday morning he was again questioned. And all the time the officers were telling him if he didn't confess to these crimes he would go to the electric chair, and if he did he would keep him out of the chair, until sometime finally Wednesday morning he agreed to confess to all of these crimes they had been accusing him. That he was then carried by the State Officers of Montgomery County to Police Headquarters and there held by the Montgomery County Police and City Police officers until the prosecutrix in this case was permitted to view him.

"And I move the Court to permit me to prove these allegations, and in order to go to the credibility of the statement which is alleged he made in her presence while he was held.

"And I move the Court to permit me to do so on the ground that a failure by the Court to permit me to do that is a denial to the defendant of his constitutional rights as guaranteed under the Fourteenth Amendment to the Constitution of the United States."

The motion was denied (R. 141).

Thus, the jury was denied substantial and crucial testimony concerning the entire pattern of coercion, and knew nothing about what happened at Kilby Tuesday and Wednesday.

D. Rebuttal: Confession to Dr. Bazar

In rebuttal the state presented the testimony of Dr. Bazar, a psychiatrist, whom they had caused to examine petitioner. Dr. Bazar concluded that petitioner was not legally insane, and testified that while examining petitioner on November 13, petitioner confessed to him (R. 165).[4] Petitioner objected to testimony of the confession as having been obtained in violation of the Constitution and exacted by the same coercion which produced the earlier confession. He made an offer of proof which was refused (R. 164-165). The Court overruled him.

Thus attempts to introduce testimony concerning the coercion of inculpatory statements and confessions were rebuffed on four occasions, each time over a Federal Constitutional objection. Neither the Court nor the jury heard the testimony. The Supreme Court of Alabama sustained the trial court's actions as to the confessions and held that defendant's rights under the Federal Constitution were not infringed (R. 191, 192, 193). It wrote that there was "nothing to show that the trial court's action in admitting them was manifestly wrong or that defendant's rights under the Federal Constitution were infringed" (R. 193).

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[4] Dr. Bazar states that he saw petitioner twice; on November 13th at Kilby and on November 20th at the County Jail (R. 161). He does not specify on which occasion the confession was made. Petitioner, however, admits confessing at Kilby and denies making any confession at the County Jail (R. 144).

IV. Motion for Mistrial Because Juror Chief of Reserve Police Force

Shortly before the trial ended petitioner informed the court that he had just discovered that one of the jurors, Jack Page, was Chief of Police of the Reserve Police Force of Montgomery and had been active in this case. Petitioner thereupon moved for a mistrial on the ground that this juror had answered falsely on *voir dire*. Petitioner further averred that the juror was Chief of the Montgomery Reserve Police Force organized for the purpose of tracking down "alleged Negro rapists" and night burglars, and that he had been active in this case (R. 172-173), and asked to call Page as a witness in support of this motion. The state admitted that Page was a member of the Police Force and had been working on cases, but denied that he had worked on this case. The Solicitor stated:

> "There was no question asked whether any member of the panel was a member of the Reserve Police Force. I am a member of the Naval Reserve and that doesn't enter into my qualifications. He has been working on cases, but has not worked on or had any connection with this case, and didn't have any opinion or bias in this case" (R. 172).

The trial court denied a hearing on the matter and overruled the objection on the ground that the jury had already been qualified (R. 173). The Supreme Court of Alabama sustained the trial court (R. 193).

The opinion of the Supreme Court of Alabama appears at page 185 of the Record.[5]

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[5] It should be noted that pursuant to Title 15, Code of Alabama, § 389 (1940), this Record contains no assignments of error. The matters which petitioner raised in the Supreme Court of Alabama were presented in his brief according to State practice.

Summary of Argument

The introduction into evidence of petitioner's "confessions" and "inculpatory statements" denied due process of law guaranteed by the Fourteenth Amendment because they were obtained following sustained interrogation and threats of electrocution while petitioner—a little-educated mentally unstable Negro youth—was held incommunicado at Kilby State Penitentiary from Monday afternoon through Wednesday morning, near and frequently in the very presence of the electric chair. The fact that the inculpatory statements to the prosecutrix, witness Clark and Dr. Bazar were made at the nearby City Jail shortly following the coercion at Kilby does not absolve the State of the consequences of the coercion at Kilby. There is a presumption that petitioner remained under the influence of the coercion; and this presumption was not dispelled by the evidence which, indeed, indicates no significant change in his situation.

Even if the confessions and inculpatory statements made at the City Jail were not coerced as a matter of law, petitioner was denied due process in that the confession issue was not "fairly tried and reviewed." Petitioner was not permitted to testify before the jury concerning the pattern of coercion which exacted the confession at Kilby State Penitentiary, and concerning the confessions made at the City Jail which followed the confession at Kilby. Thus, the jury heard the confessions and the State's side of the story that they were voluntary, but was denied relevant and important defense testimony concerning how the confessions were coerced.

The Supreme Court of Alabama erred in holding that even if the confessions were coerced this Court's opinion in *Stein* v. *New York*, 346 U. S. 156 made reversal unnecessary, because there was evidence apart from confessions

upon which the conviction could be sustained. But this Court's opinion in the *Stein* case was concerned with a quite different problem: (1) In the *Stein* case the confession was held not to have been coerced. (2) This Court then went on to say that where a confession is not coerced *as a matter of law*, an appellate court need not reverse even though it is possible that the *jury* might have found it coerced *as a matter of fact* and convicted defendant nevertheless. (3) In the *Stein* case defendant had been permitted to put on evidence relevant to the issue of coercion. Here petitioner was not permitted to do so. (4) In the *Stein* case petitioner requested an instruction for acquittal if the jury found the confession coerced. That issue is not involved here. This Court would not have upset its long standing rule that where a conviction is tainted by a coerced confession the conviction must fall, without saying so explicitly.

There was systematic exclusion of Negroes from juries in Montgomery County, caused by a system of jury selection which relied wholly upon the jury commissioners' personal acquaintanceship, when the commissioners knew few Negroes. Thus, as one commissioner testified, it was "particularly hard" for Negroes to become jurors. As a result, although the Negro population of Montgomery County is 43.6%, no more than 3 Negroes or (a range of 0% to 8.5% of any panel) ever appeared on any jury panel.

Arbitrary exclusion of all portions of the general public from the entire trial denied petitioner's right to a public trial as guaranteed by the due process clause of the United States Constitution. The right to a public trial is recognized uniformly throughout the English speaking world. The only limitations upon it which are generally admitted are those which contribute to the fair and orderly administration of justice. Thus, children and unruly persons may be excluded, or the general public may be excluded for

a limited time during, for example, the testimony of a prosecutrix who cannot express herself before a large audience. Cases upholding the exclusion of the entire public from all phases of a criminal case, over a defendant's objection, have been found in but a few states. Such arbitrary exclusion is unrelated to the orderly and fair administration of justice, and even to the State's avowed purpose of protecting the morals of the public. If petitioner's motion to limit the exclusion of the public only to the time of prosecutrix's testimony had been granted, petitioner's rights would have been protected. Certainly, the exclusion of the public during the empanelling of the jury had no reasonable relation to any permissible purpose and may have seriously prejudiced petitioner, for without petitioner's knowledge—although the State knew of it—the Chief of the Reserve Police Force of Montgomery County became a member of the jury after having failed to disclose his police affiliation on *voir dire*. Thus petitioner was tried by a juror with an interest in his conviction. One of the principal reasons for the public trial right is that it is designed to prevent miscarriages of justice abetted by concealment of this sort.

These were not merely individual fatal flaws in petitioner's trial, but considered cumulatively these errors robbed petitioner's trial of any semblance of the open quality which characterizes judicial proceedings in the United States and, indeed throughout the English speaking world.

ARGUMENT

I

A.

Due process of law guaranteed by the Fourteenth Amendment was denied to petitioner—a little-educated, mentally unstable Negro youth—by introduction into evidence of his "confessions" and "inculpatory statements" made following sustained interrogation, punctuated by threats of electrocution, while he was held incommunicado at the State Penitentiary from Monday afternoon through Wednesday morning near and frequently in the very presence of the electric chair.

The confessions [6] which were introduced into evidence were coerced as a matter of law. There is no controversy as to the facts because the issue arises upon proffers (R. 55-56, 58-59, 74, 164-165, 139-141), which were rejected as irrelevant by the trial court and as irrelevant and insufficient in law by the Alabama Supreme Court. Nowhere are the allegations denied by the State.[7] Indeed, although

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[6] There are involved inculpatory statements which amounted to confessions (R. 59-60, 75, 190-191), a confession (R. 165-166) and testimony that there had been a confession (R. 58, 64-65). For brevity, petitioner refers to them as the confessions, except where it is necessary to distinguish among them.

[7] There is some testimony of a general nature apparently introduced to exculpate the State from a charge of coercion, but it does not amount to denying any of petitioner's allegations: There is testimony by prosecutrix that she knew nothing of what occurred prior to petitioner's statements at the City Jail (R. 57), that she saw no one threaten petitioner there (R. 55, 57); by the Director of the State Department of Toxicology and Criminal Investigation that no one coerced petitioner between 2:30 and 3:00 P. M. on November 11th (R. 92-93); by petitioner that the Solicitor told petitioner he would help him (R. 143); by the Prison Classification Officer that the Solicitor told petitoiner he could make him no promises and would get him a lawyer if he didn't hire one (R. 159); by Captain J. Lewis Miller of the detective force of Montgomery that in his presence no one coerced petitioner at the City Jail (R. 156).

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testimony in support of the proffers was forbidden, there is incidental corroboratory testimony in the record.[8]

Prior to the introduction of the confessions petitioner in these proffers offered to prove the existence of many facts each of which this Court frequently has held to be relevant on the issue of coercion:

That he was a Negro,[9] seventeen years of age,[10] had an eighth grade education,[11] that he was held incommunicado

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[8] On cross-examination, S. E. Sellers, City Detective, testified that he was at Kilby on November 10th and was with defendant for twenty to forty minutes, that during this time Warden Dees was present, that petitioner was in the room next to the electric chair, but that he (Sellers) did not hear what was said (R. 99-100). Petitioner's mother testified that she had not been permitted to see him until Wednesday afternoon (R. 102-103). Petitioner's father testified he had not been permitted to see him until Thursday (R. 116-117). There was testimony by the Prison Classification Officer that petitioner was held without a charge lodged against him (R. 160). Before petitioner's testimony was interrupted, he testified as to his age (R. 135); that he had been threatened in a number of ways by the officers who picked him up, including with the electric chair (R. 137-138); that he was held incommunicado (R. 137); that on Monday he was questioned till dark, went to sleep and was then awakened and taken into the room with the electric chair (R. 138); that Warden Dees threatened him with the chair if he did not confess (R. 138). That he did not see his parents until 5:00 P. M. Wednesday (R. 141); that he was frightened (R. 142).

[9] In ascertaining whether a confession is coerced, this Court gives weight to the fact that defendant is a member of an unpopular racial group. *Chambers* v. *Florida*, 309 U. S. 227, 237, 241; *Ward* v. *Texas*, 316 U. S. 547, 555; *Harris* v. *South Carolina*, 338 U. S. 68, 70, as part of considering his "condition in life" *Gallegos* v. *Nebraska*, 342 U. S. 55, 67. See, Mr. Justice Jackson's dissenting opinion in *Ashcraft* v. *Tennessee*, 322 U. S. 143, 156, 173.

[10] Whether defendant is mature or immature is important in evaluating whether a confession has been coerced. *Haley* v. *Ohio*, 332 U. S. 596.

[11] The degree of education which a defendant has had is an important factor in evaluating whether a confession has been coerced. *Ward* v. *Texas*, 316 U. S. 547, 555; *Harris* v. *South Carolina*, 338 U. S. 68, 70.

at Kilby from about 2:00 P. M. on Monday the 10th, through 5:00 P. M. on Wednesday the 12th, that he was denied permission to talk to or phone anyone, that friends and relatives had been forbidden to see him or speak to him,[12] that he was continuously questioned and abused,[13] was kept next to the room with the electric chair, that he

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[12] Holding petitioner incommunicado was not only in probable violation of Alabama law, 15 Code of Ala. § 160 (1940), *Ingram* v. *State*, 34 Ala. App. 597, 601, 42 So. 2d 30 (1949), but contrary to the almost universal rule. See statutes collected in *McNabb* v. *U. S.*, 318 U. S. 332, 342, fn. 7. Although there has been some controversy over whether this alone should vitiate a confession it is at least a serious factor to be weighed, because, "[t]o delay arraignment, meanwhile holding the suspect incommunicado, facilitates and usually accompanies use of 'third degree' methods. Therefore [this Court] regard[s] such occurrences as relevant circumstantial evidence in the inquiry as to physical or psychological coercion." *Stein* v. *New York*, 346 U. S. 156, 187. See also *Harris* v. *South Carolina*, 338 U. S. 68, 71; *Turner* v. *Pennsylvania*, 338 U. S. 62, 64; *Ward* v. *Texas*, 316 U. S. 547, 555; *Ashcraft* v. *Tennessee*, 322 U. S. 143, 152; *Malinski* v. *New York*, 324 U. S. 401, 412, 417; *Turner* v. *Pennsylvania*, 338 U. S. 62, 66, 67.

[13] If petitioner had been able to develop this line of inquiry he would have been able to show the nature and extent of the interrogation. Questioning began after 2:00 P. M. on the afternoon of Monday the 10th (R. 140) and continued until dark (R. 138); petitioner then slept for fifteen or twenty minutes and was awakened and taken into the room with the electric chair (R. 140); he was questioned there all night (R. 140); early Tuesday morning he was awakened and he was then questioned all day Tuesday and part of Tuesday night (R. 140). Later Tuesday night he slept. Wednesday morning he was questioned again, until he confessed (R. 140). Questioning was of long duration, and was conducted and threats were made by a series of officers (R. 74, 140, 164).

Continuous interrogation has been deemed an important factor in evaluating whether a confession has been coerced, *Chambers* v. *Florida*, 309 U. S. 227, 231; *Ward* v. *Texas*, 316 U. S. 547, 555; *Ashcraft* v. *Tennessee*, 322 U. S. 143, 154; *Haley* v. *Ohio*, 332 U. S. 596, 600; *Turner* v. *Pennsylvania*, 338 U. S. 62, 64.

was taken into the electric chair room and threatened with death in the electric chair[14] and was offered the hope and promise that if he confessed he would save his life from the chair;[15] that while held there he was stripped naked and photographed, and had his spine tapped and blood taken from his arm against his will.[16] Further inquiry would have developed that petitioner was mentally unstable (R. 105, 121-122, 124), and came from a poverty stricken home (R. 107), and was therefore even more likely to capitulate than the ordinary otherwise disadvantaged seventeen year old Negro youth in his plight.

Almost every aspect of the treatment which petitioner received at Kilby is found in the leading cases in this Court condemning exaction of involuntary confessions. Virtually each form of the pressure employed has been condemned by this Court.[17] In combination, petitioner submits, they formed an irresistible pattern.

Mute testimony that petitioner was subjected to illegal coercion at Kilby is given by the State's unwillingness

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[14] In *Wilson v. Louisiana*, 341 U. S. 901, aff'g 217 La. 470, 46 So. 2d 738, petitioner had been brought into the electric chair room in the course of obtaining a confession from him. However, the Louisiana Court noted that the electric chair was not visible and that there was no evidence that it had the effect of intimidating petitioner there. Cf. *State* v. *Auguste*, 50 La. Ann. 488, 23 So. 612 (1898) (prisoner interrogated in presence of gallows, confession held coerced).

[15] A lighter penalty is one of the inducements which was offered in *Leyra* v *Denno*, —— U. S. ——, 98 L. ed. (Adv. 631, 633). As Mr. Justice Minton wrote, at p. 645 (concerning the first confession in Leyra): such "threats, cajoling, and promises of leniency * * * to induce petitioner to confess were soundly condemned * * * "

[16] The effect of similar treatment was noted in *Malinski* v. *New York*, 324 U. S. 401, 403, 407. Also see *Rochin* v. *California*, 342 U. S. 165, 173, 174, 179.

[17] Footnotes 9 through 16 cite only some of the cases in this Court in which it has been held that confessions were coerced because of practices such as those used here.

even to attempt to introduce a "confession" (R. 58, 64-65) which was apparently made before he was removed to the City Jail.

Transfer of petitioner from one jail to another on Wednesday morning so that he might be identified by prosecutrix clearly did not alleviate his condition. No appreciable time had elapsed.[18] He was still in police custody. He was still incommunicado.[19] He labored under the crushing burden of having already confessed.[20] He was confronted by prosecutrix accusing him of a frightful crime. His age, education and mental condition were no different. It does not appear that any significant change in circumstances occurred. Neither did any significant change in circumstances occur prior to his confessing to the psychiatrist,[21] or to witness Clark.[22] But even apart from the factual showing that his situation was the same, such a confession remains coerced as a matter of law

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[18] The time gap cannot be ascertained with precision, but it was no more than a few hours. We know petitioner was questioned on Wednesday morning at Kilby (R. 140), that the ride from Montgomery to Kilby is about 15 minutes (R. 140); that prosecutrix went out to the City Jail at 11:00 (R. 57).

[19] His parents were not permitted to see him until late Wednesday afternoon (R. 102-103, 116, 117, 141).

[20] As Mr. Justice Jackson wrote in *United States* v. *Bayer*, 331 U. S. 532, 540, once an accused has confessed, "no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed." In *U. S.* v. *Bayer*, the Court weighed a time lapse of six months and concluded that this length of time in conjunction with only a modicum of restraint vitiated a previous inducement to confess. See Mr. Justice Rutledge's concurring opinion in *Malinski* v. *New York*, 324 U. S. 401, 420, 428; Mr. Justice Murphy's dissenting opinion in *Lyons* v. *Oklahoma*, 322 U. S. 596, 605, 606.

[21] A day had elapsed and he had seen his mother (R. 144, 102-103).

[22] Clark thinks he saw petitioner on the 17th (R. 75).

unless the State comes forward to overcome the presumption created by the undisputed facts. Mr. Justice Minton stated the general rule when he wrote:

> "As in the case of other forms of coercion and inducement, once a promise of leniency is made a presumption arises that it continues to operate on the mind of the accused. But a showing of a variety of circumstances can overcome that presumption. The length of time elapsing between the promise and the confession, the apparent authority of the person making the promise, whether the confession is made to the same person who offered leniency, and the explicitness and persuasiveness of the inducement are among the many factors to be weighed." *Leyra* v. *Denno*, —— U. S. ——, 98 L. ed. (Adv. 631, 645, 647).[23]

The State produced nothing. The record shows that there was no change in conditions that makes any legal difference.

Because of the introduction into evidence of these coerced confessions, or any of them,[24] the judgment below must fall.

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[23] III Wigmore § 855, states: "* * * the general principle is universally conceded that the *subsequent ending* of an improper inducement *must be shown*; *i. e.* it is assumed to have continued until the contrary is shown." (Italics in original). See also Mr. Justice Rutledge's concurence in *Malinski* v. *New York*, 324 U. S. 401, 420, 428; Mr. Justice Murphy's dissenting opinion in *Lyons* v. *Oklahoma*, 322 U. S. 596, 605, 606.

[24] *Stroble* v. *California*, 343 U. S. 181, 190; *Malinski* v. *New York*, 324 U. S. 401, 402, 404; *Lyons* v. *Oklahoma*, 322 U. S. 596, 597 note 1.

B.

Even if the confessions were not coerced as a matter of law, due process was denied in that the confession issue was not "fairly tried and reviewed": The jury which heard the confessions was not permitted to hear the relevant and important testimony offered by petitioner concerning their exaction.

In Point A, *supra*, petitioner demonstrated by undisputed facts that this conviction rests upon confessions obtained contrary to due process of law. Petitioner submits in this section that error was compounded by the trial court's refusal to permit the jury to hear evidence of how the confessions were exacted.

Following the State's case, petitioner began to testify concerning the pattern of coercion which commenced at Kilby on Monday and continued through Wednesday morning when he confessed, just prior to being brought before prosecutrix. The court stopped him before he completed testifying about Monday. Thereupon petitioner made the proffer which appears on page 11, *supra*.

The trial court refused to permit the jury to hear this testimony on the ground that it did not concern events in the City Jail (R. 138, 140, 141). On review the Supreme Court of Alabama upheld the trial court.[25] Therefore, neither the trial court nor the jury nor the Supreme Court fairly considered the pattern of coercion preceding the confessions. Petitioner submits that by this procedure he

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[25] The Alabama Supreme Court considered State testimony concerning events at Kilby on Tuesday the 11th (R. 192). It deemed the events of the 11th relevant at least for purposes of the State's case, although *defense* testimony concerning the 11th had been excluded as irrelevant.

was denied his fundamental, constitutional right to have the confession issue "fairly tried and reviewed."[26]

The law has long recognized that prisoners may confess for any one of or a combination of many complex reasons. In some cases the psychology of the problem may be clear; in others obscure. But, in any case, it is fundamental "* * * that confessions vary in value according to the circumstances in which they are made."[27] The fundamental importance of the right to present evidence to the jury on the issue of voluntariness is demonstrated by the fact that in every American jurisdiction, once the jury hears a confession the defendant is permitted to put on testimony of circumstances surrounding its exaction.[28] Most jurisdictions instruct the jury to reject a

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[26] *Stein* v. *New York*, 346 U. S. 156, 182. See also Mr. Justice Burton's dissent in *Haley* v. *Ohio*, 332 U. S. 596, 607, 615: "Due process of law under the Fourteenth Amendment requires that the States use some fair means to determine the voluntary character of a confession * * *"

The issue of the right to testify concerning the exaction of a confession was raised in the *Stein* case, at pp. 173-175, but this Court held that it was not properly presented. Petitioners alleged that as a practical matter they had been prevented from presenting evidence of coercion, because if they had testified on the confession issue they would have opened themselves up to general cross-examination. The State denied this. At any rate petitioners there did not take the stand and then object to cross-examination when, in their opinion, it exceeded the bounds of due process, and therefore the issue was not before this Court.

In the case now at bar there was a *flat refusal* to permit petitioner to testify concerning relevant and weighty facts bearing on the confession.

[27] III Wigmore § 866.

[28] *Dyer* v. *State*, 241 Ala. 679, 4 So. 2d 311 (1941); *State* v. *Smith*, 62 Ariz. 145, 155, 155 P. 2d 622 (1944); *Nelson* v. *State*, 190 Ark. 1078, 1082, 83 S. W. 2d 539 (1935); *People* v. *Fox*, 25 Cal. 2d 330, 340, 153 P. 2d 729 (1944); *Diaz* v. *People*, 109 Colo. 482, 485-486, 126 P. 2d 498 (1942); *State* v. *Willis*, 71 Conn. 293, 314, 41 Atl. 820 (1898); *Williams* v. *State*, 156 Fla. 300, 303, 22 So. 2d 821 (1945); *Bryant* v. *State*, 191 Ga. 686, 711, 13 S. E. 2d 820 (1941); *State* v. *Hofer*, 238 Ia. 820, 829, 28 N. W. 2d 475 (1947);

confession which it finds to be coerced; some instruct it to consider coercion in determining what weight to give

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[28] (Continued)

State v. *Van Vlack*, 57 Id. 316, 342-343, 65 P. 2d 736 (1937); *People* v. *Roach*, 369 Ill. 95, 96, 15 N. E. 2d 873 (1938); *Mack* v. *State*, 203 Ind. 355, 373, 180 N. E. 279 (1932); *State* v. *Taylor*, 119 Kan. 260, 262, 237 Pac. 1053 (1925); *Logan* v. *Commonwealth*, 308 Ky. 259, 262-263, 214 S. W. 2d 279 (1948); *State* v. *Wilson*, 217 La. 470, 486, 46 So. 2d 738 (1950) affd. 341 U. S. 901; *Nicholson* v. *State*, 38 Md. 140, 155 (1873); *Comm.* v. *Sheppard*, 313 Mass. 590, 604, 48 N. E. 2d 630 (1943) cert. den. 300 U. S. 213; *State* v. *Grover*, 96 Me. 363, 366, 52 A. 757 (1902); *People* v. *Dudgeon*, 229 Mich. 26, 30, 201 N. W. 355 (1924); *State* v. *Schabert*, 222 Minn. 261, 263, 24 N. W. 2d 846 (1946); *Brooks* v. *State*, 178 Miss. 575, 582, 173 So. 409 (1937); *State* v. *Gibilterra*, 342 Mo. 577, 585, 116 S. W. 2d 88 (1938); *State* v. *Sherman*, 35 Mont. 512, 519, 90 Pac. 981 (1907); *Cramer* v. *State*, 145 Neb. 88, 97-98, 15 N. W. 2d 323 (1944); *State* v. *Cleveland*, 6 N. J. 316, 326, 78 A. 2d 560, 23 A. L. R. 2d 907 (1951); *State* v. *Vaisa*, 28 N. M. 414, 417, 213 Pac. 1038 (1923); *People* v. *Elmore*, 277 N. Y. 397, 404, 14 N. E. 2d 451, 124 A. L. R. 465 (1938); *State* v. *Kerns*, 50 N. D. 927, 940, 198 N. W. 698 (1924); *State* v. *Collett*, 58 N. E. 2d 417, 424 (Ohio) (1944); *Smith* v. *State*, 77 Okla. Crim. 142, 146-147, 140 P. 2d 237 (1943); *State* v. *Jordan*, 146 Ore. 504, 511, 30 P. 2d 751 (1934); *Comm.* v. *Van Horn*, 188 Pa. 143, 168, 41 A. 469 (1898); *State* v. *Williams*, 31 Nev. 360, 371, 102 P. 974 (1909); *State* v. *Adams*, —— R. I. ——, 121 Atl. 418, 419 (1923); *State* v. *Scott*, 209 S. C. 61, 64-65, 67, 38 S. E. 2d 902 (1946); *State* v. *Nicholas*, 62 S. D. 511, 515, 253 N. W. 737 (1934); *Wynn* v. *State*, 181 Tenn. 325, 329, 181 S. W. 2d 332 (1943); *Cavazos* v. *State*, 143 Tex. Cr. 564, 566, 160 S. W. 2d 260 (1942); *State* v. *Crank*, 105 Utah 332, 355, 364, 142 P. 2d 178, 170 A. L. R. 542 (1943); *Jackson* v. *Commonwealth*, 193 Va. 664, 674, 70 S. E. 2d 322 (1952); *State* v. *Van Brunt*, 22 Wash. 2d 103, 108, 154 P. 2d 606 (1944); *State* v. *Richards*, 101 W. Va. 136, 141, 132 S. E. 375 (1926); *Pollack* v. *State*, 215 Wisc. 200, 217, 253 N. W. 560 (1934); *Clay* v. *State*, 15 Wyo. 42, 59, 86 Pac. 17 (1906); *Wilson* v. *U. S.*, 162 U. S. 613, 624 (1896); *Witt* v. *United States*, 196 F. 2d 285, 286 (C. A. 9th, 1952), cert. den. 344 U. S. 827; *Murphy* v. *United States*, 285 F. 801, 808 (C. A. 7th, 1923), cert den. 261 U. S. 617; *Catoe* v. *U. S.*, 131 F. 2d 16, 19, 76 App. D. C. 292 (1942).

the confession.[29] But no jurisdiction has been found which keeps from the jury the circumstances surrounding the exaction of a confession which it has heard. Indeed, in Alabama the rule is that if a confession is held not to have been coerced as a matter of law, the trial court permits the jury to hear evidence concerning its exaction so that it may determine its credibility.[30] This is the English rule too.[31] But by tightly drawing the circle of relevancy the

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[29] The states are classified in 170 A. L. R. 567.

[30] *Dyer* v. *State*, 241 Ala. 679, 4 So. 2d 311 (1941); *Vernon* v. *State*, 239 Ala. 593, 196 So. 96 (1940). The jury was so charged in this case (R. 175), but, of course, it had been denied petitioner's proffered evidence and so the instruction was meaningless.

[31] A recent case in the King's Bench decided by Lord Chief Justice Goddard, contains a particularly clear discussion of the importance of the right to present evidence of involuntariness to the jury:

> "The recorder was wrong in the course which he took. It was quite right for him to hear evidence in the absence of the jury and to decide on the admissibility of the confession; and, since he could find nothing in the evidence to cause him to think that the confession had been improperly obtained, to admit it. But its weight and value were matters for the jury, and in considering such matters they were entitled to take into account the opinion which they had formed on the way in which it had been obtained. Mr. Hooper was perfectly entitled to cross-examine the police again in the presence of the jury as to the circumstances in which the confession was obtained, and to try again to show that it had been obtained by means of a promise or favour. If he could have persuaded the jury that, he was entitled to say to them: 'You ought to disregard the confession because its weight is a matter for you.'
>
> "The point, if there is any doubt about it, ought to be finally settled. * * * It has always, as far as this court is aware, been the right of counsel for the defence to cross-examine again the witnesses who have already given evidence in the absence of the jury; for if he can induce the jury to think that the confession was obtained through some threat

trial court in this case barred the proffered testimony from the jury.

This ruling was patently erroneous insofar as it denied petitioner the right to testify concerning the confession—about which prosecutrix had testified—(R. 58, 64-65) which was made immediately following the coercion at Kilby.

And certainly reasonable men knowing all the facts, could have concluded that the subsequent confessions were coerced, even if *arguendo*, by moving petitioner to the City Jail the State escaped the consequences of coercion at Kilby *as a matter of law*.[32] But the jury here was prevented from knowing all the facts, and could not fairly try the issue.

Depriving the jury of this testimony may not have only influenced the issue of guilt, it may have meant the difference between the death penalty and a term of years which the jury was free to impose.[33]

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[31] (Continued)

> or promise, its value will be enormously weakened. The weight and value of the evidence are always for the jury." *Rex* v. *Murray*, 1 K. B. 391 (1951).

In *Rex* v. *Murray* the recorder also charged the jury that they were not to consider the circumstances under which the confession was obtained. But that does not make it unlike this case, for here, although the jury received a charge on credibility it was not permitted to hear the evidence.

[32] See, the opinion of Mr. Justice Minton dissenting in *Leyra* v. *Denno*, —— U. S. ———, 98 L. Ed. (Adv. 631, 645, 646): It is "* * * the very essence of due process to submit to a jury the question of whether these later confessions were tainted by the prior coercion and promises. * * *"

See also, *Lyons* v. *Oklahoma*, 322 U. S. 596, 603: Evidence of coercion, such as that offered by petitioner here must "[O]f course * * * be considered in appraising the character of the later confession."

[33] Cf. *U. S. ex rel. Almeida* v. *Baldi*, 195 F. 2d 815, 819-820 (C. A. 3d, 1952).

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The jury heard the confessions and heard of them. It heard some State's evidence that they had been farily obtained. But it was denied defendant's proffered testimony of an entire pattern of coercion bearing heavily on their credibility. Those opinions in this Court, both majority or dissenting, which have approved the admission of confessions in particular cases have frequently stressed that the matter was fairly tried and reviewed below because the triers had seen the witnesses and had heard all of the evidence of both sides concerning exaction of the confession. This record is bare of any semblance of such fair procedure.

In another context Mr. Justice Jackson condemned "a curtailment which keeps from the jury relevant and important facts bearing on the truthworthiness of crucial testimony," *Gordon* v. *United States*, 344 U. S. 414, 423. The curtailment here of testimony bearing on a constitutional claim was of even greater gravity. For these reasons, petitioner submits that the confession issue was not fairly tried and reviewed, and that therefore the judgment below must fall.

C.

The Supreme Court of Alabama erred in holding that even if the confessions were coerced, the decision in *Stein* v. *New York*, 346 U. S. 156 permitted affirmance because there was sufficient evidence apart from the confessions upon which the conviction could have been based.

The Alabama Supreme Court concluded that even if the confessions were coerced, there was no error because there was enough evidence to convict without the confessions. In this it relied upon *Stein* v. *New York*, 346 U. S. 156. It wrote:

> "In considering all the evidence, * * * and the finding of the Court, * * * that the statements were voluntary, we cannot say that the admission of these statements was reversible error. Moreover, the admissions to the prosecutrix and the confession to Dr. Bazar did not form the basis of a conviction. The State had established the identity of this defendant as the perpetrator of the crime by very convincing proof 'and the matter of confession was but cumulative and approached what might properly be termed supererogation * * *' *Johnson* v. *State*, 242 Ala. 278, 5 So. 2d 632, cert. den. 316 U. S. 693, 713, or as stated in *Stein* v. *New York, supra*. 'Here the evidence of guilt * * * is enough apart from the confessions so that it could not be held constitutionally or legally insufficient to warrant the jury verdict' " (R. 192).

In this, petitioner submits, the Alabama Supreme Court misinterpreted *Stein* v. *New York*.[34]

In the *Stein* case the opinion for the court held that the confessions were not coerced as a matter of law.[35] It then proceeded to consider the possibility that despite this *legal* conclusion, the jury, nevertheless, found the confessions coerced as a matter of fact. This, of course, could only be an assumption, for no one could know what the jury, in finding a general verdict, thought of the confession issue; or indeed, whether there was unanimity among the jurors on this particular point. Proceeding on the *assump-*

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[34] Even if it were correct in its interpretation of the *Stein* case, the judgment below must fall, for the case against petitioner consists wholly of the confessions and prosecutrix's identification of petitioner which was the fruit of the confession. See p. 5, *supra*. Compare *Stein* v. *New York*, 346 U. S. 156, 163, n. 6 where the identification was held to be fair.

[35] *Stein* v. *New York*, 346 U. S. 156, especially pp. 179-188.

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tion that the jury found the confession coerced, the Court held that this assumed finding was not subject to review. However this does not mean that the trial court's and the State Supreme Court's ruling is not subject to review, or that their error may be disregarded because other evidence sufficient to convict is in the record.[36] Therefore, the *Stein* case did not hold that the State may introduce confessions coerced as a matter of law and sustain a conviction upon other evidence.

This case differs from the *Stein* case in fundamental respects. (1) Here, unlike in the *Stein* case, the confessions were coerced as a matter of law. (2) In the *Stein* case, where the jury heard evidence concerning the method by which the confessions were obtained, the confession issue was held to have been fairly tried and reviewed. Petitioner there, despite his claim to the contrary, had not been prevented from testifying concerning exaction of the confessions. Here petitioner was so prevented and the jury was denied such evidence. Thus, the confession issue in the instant case was not fairly tried or reviewed.

Petitioner submits that the language in the *Stein* opinion which contributed to the erroneous inference of the Alabama Supreme Court was generated by the issues raised in the *Stein* case relating to a requested instruction for acquittal if the jury found that the confessions were coerced. Petitioner respectfully suggests that close analysis of the issues raised by the requested instruction will indicate that the Court, in disposing of those issues, had no intention of departing from the long-established rule that a conviction tainted by a coerced confession must be set aside.

A request for an instruction of acquittal automatically called for an appraisal of all the evidence, for such an

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[36] See, Note, The Supreme Court, 1952 Term, 67 Harv. L. Rev. 91, 120 (1953).

instruction could be complied with only if the evidence apart from the confession was inadequate to sustain a conviction. The requested instruction therefore involved a two-step operation: (1) an appraisal of the voluntariness of the confession; (2) if it was found involuntary, an appraisal of the rest of the evidence. When such other evidence was weighed in the *Stein* case it appeared that petitioners there could have suffered no prejudice by the denial of their requested instruction, because there was sufficient other evidence. That issue is not involved here. Petitioner here does not demand a mandatory acquittal. Petitioner here requests a new, fair trial.

Petitioner recognizes that the dissenting opinions in the *Stein* case expressed serious doubts as to whether the majority opinion effectively erased the rule that a coerced confession requires a new trial. Petitioner suggests that no such drastic intention can be attributed to the majority where the opinion discloses no express overruling of the unwavering line of cases whose rule has been reiterated as recently as *Brown* v. *Allen*, 344 U. S. 443, 475.[37] If there were any doubt on this score, it must have been set at rest by this Court's application of the conventional rule —since *Stein*—in *Leyra* v. *Denno*, —— U. S. ——, 98 L. ed. (Adv. 631) where this court, having found a confession to have been coerced, summarily reversed the judgment below without appraising the evidence other than the tainted confession.

The rule which the Alabama Court employed would wipe out an accused's protection against the introduction of coerced confessions and has never been adopted by this Court.

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[37] e.g. *Malinski* v. *New York*, 324 U. S. 401, 404; *Stroble* v. *California*, 343 U. S. 181, 190, 191; *Lyons* v. *Oklahoma*, 322 U. S. 596, 597; *Haley* v. *Ohio*, 332 U. S. 596, 599; *Gallegos* v. *Nebraska*, 342 U. S. 55, 63.

II

There was systematic exclusion of Negroes from the venire in that the commissioners employed a selection method whereby it was "particularly hard" for Negroes to become jurors if the commissioners did not personally know them; commissioners knew fewer Negroes than whites; and although the Negro population of Montgomery County is 43.6%, panels contained only 0% to 8.5% Negroes.

The state used a system of jury selection which had to result in systematic exclusion of Negroes from juries, and which, in fact, resulted in such exclusion contrary to the Fourteenth Amendment of the United States Constitution and Title 18 U. S. C. § 243.

The Alabama statute which sets the qualifications of jurors requires, with a few exceptions, that jurors shall be "male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment • • • " (R. 33). It further directs that the commission clerk who "is charged with the duty of seeing" that the names of all qualified persons are placed in the jury box, "scan the registration lists,[38] the lists returned to the tax assessor, any city directories, telephone directories, and any and every other source of information from which he may obtain information • • • " (30 Code of Ala. § 24 (1940)). However, the jury commissioners limited the names in the box to persons whom they knew personally (R. 28-29, 37) or to persons whose names they had obtained from individuals or organizations with whom they were personally acquainted (R. 28-29, 33, 37).

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[38] Petitioner made several efforts to ascertain whether the voting list was employed, but this was ruled out as irrelevant (R. 31).

As Mr. Justice Reed pointed out in *Cassell* v. *Texas*, 339 U. S. 282, 288, one might expect that in a community like Montgomery the opportunity for white jury commissioners to have personal acquaintanceship with Negroes is limited. This was the case here and the commissioners so testified. They knew few Negroes (R. 29, 37) and with one vague exception did not know any Negro clubs or go to them for names (R. 33, 36), although they obtained names from almost every white club in the county (R. 33). Although they testified that they made efforts to obtain names of "high class" or "good" Negroes (R. 29, 36, 38) their success does not appear to be much better (R. 29, 36, 37, 40, 42) than that discussed in *Hill* v. *Texas*, 316 U. S. 400, 402, or *Cassell* v. *Texas*, 339 U. S. 282, 288, fn. 23, where avowedly diligent, but unsuccessful efforts to obtain Negroes on a personal basis did not avoid condemnation by this Court. Among the Negroes from whom they testified they requested names (R. 29, 36, 37, 40, 42), the record reveals only one clear instance of names having been furnished (R. 29).

A commissioner testified that it was "particularly hard" to place Negroes' names in the box "without knowing them" (R. 29), and the composition of the panels reflects this difficulty. No more than 8½% of the members of any panel were ever Negroes,[39] and this is an optimum, not a

[39] This figure is derived by assuming a panel of thirty-five persons (R. 30), including three Negroes (R. 30). Since there are panels with no Negroes (R. 35) and panels with fewer than three (R. 30, 34-35), and since fifty jurors are called for each panel (R. 30), although as few as thirty-five may show up, the figure of 8½% is an optimum one. (Jury Commissioner Carter's explicit testimony that he had never seen more than three Negroes on a panel (R. 30) seems to rob of statistical significance his later casual remark that there have sometimes been as many as 3 or 4 at one time (R. 35). However, even assuming for purposes of argument that there have ever been as many as four Negroes on a panel, this can make but a negligible difference in the resultant arithmetic and can make no difference whatsoever in the legal conclusions to be drawn therefrom.)

typical situation, which construes ambiguities in favor of the State. There have been panels with no Negroes (R. 35) and panels with fewer than three (R. 30, 34-35). In this case, a commissioner testified, there was one Negro on the jury panel (R. 34-35). Compared with a Negro population of 43.6% [40] in the County, which presumably was as qualified as the white population for jury service, *Hill* v. *Texas*, 316 U. S. 400, 404, the disparity is shocking. But given the system of selection, it was inevitable.

Thus, the case falls under the ban of *Cassell* v. *Texas*, *supra*, and *Avery* v. *Georgia*, 345 U. S. 559.

There were several opinions in the *Cassell* case and each discusses factors relevant to this case and condemns the practice or result which exists in this case. Mr. Justice Reed's opinion noted petitioner's charge there "that discrimination must have been practiced because the Negro proportion of grand jurors (6.7%) is less than the Negro proportion of the county's population," which was about 15.5%, *Cassell* v. *Texas*, *supra* at pages 284-285. However, the disparity was perhaps explainable by the fact that a grand juror in Texas must possess certain statutory qualifications: eligibility to vote (which requires poll tax payment); he must be a freeholder or householder; he must be of sound mind and good character; he must be literate. The poll tax requirement alone reduced the number of eligible Negroes to 6.5%, "a percentage approximately the ratio of Negroes actually sitting on the 21 grand jury panels." *Id.* at pages 285-286. Therefore, Mr. Justice Reed concluded that "[w]ithout more it cannot be said that Negroes had been left off grand jury panels to such a degree as to establish a prima facie case of discrimination." *Id.* at page 286.

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[40] Montgomery County has a total population of 138,965 of which 60,592, or 43.6% is Negro. 1950 Census of Population, Vol. II, Characteristics of Population, Part 2, p. 2-87.

In this case the disparity is more glaring (0%-8.5% on panels compared to 43.6% in population) and is not explainable in terms of other factors. There is no voting requirement; there is no property requirement; there is not even a literacy requirement (R. 46). The only requirement which explains the disparity is one imposed by the commissioners themselves: a juror must be an acquaintance of a commissioner or must be recommended by a person or organization that the commissioner knows, where these sources are almost exclusively white.

However, Mr. Justice Reed did condemn the *Cassell* grand jury on grounds that are pertinent here. The system of selection in the *Cassell* case was based on personal acquaintanceship. The commissioners testified that they knew no available qualified Negroes, which was substantially the case here. Mr. Justice Reed therefore held:

> "The statements of the jury commissioners that they chose only whom they knew, and that they knew no eligible Negroes in an area where Negroes made up so large a proportion of the population, prove the intentional exclusion that is discrimination in violation of petitioner's constitutional rights." *Id.* at page 290.

Mr. Justice Frankfurter condemned the jury discrimination in the *Cassell* case on grounds equally pertinent here. He did not disapprove of the method of selection although he pointed out that "[a] different situation would be presented by an unquestioned showing that jury commissioners had such a limited personal knowledge of potentially qualified Negro jurors that their purposeful limitation of choice to the negligibly few Negroes known to them would inevitably imply designed exclusion of eligible Negroes." *Id.* at pages 292-293.

However, he held where "one factor is uniform in a continuing series of events that are brought to pass

through human intervention, the law would have to have the blindness of indifference rather than the blindness of impartiality not to attribute the uniform factor to man's purpose", *Id.* at page 293. In the *Cassell* case, no more than a single Negro on twenty-one consecutive panels was such a uniform factor. Therefore, Mr. Justice Frankfurter concluded, the decision below should be reversed.

Here, there is such a persistent limitation also. In fact, the exclusion is more than twice as severe as that practiced in the *Cassell* case [41] with none of the possible justifications which Mr. Justice Reed found there. Therefore, under Mr. Justice Frankfurter's opinion in the *Cassell* case, the judgment here must also fall.

Mr. Justice Clark, in a concurring opinion in the *Cassell* case condemned the method of selection in terms equally applicable to this case:

> "The record indicates clearly that there were Negroes qualified and available whom the commissioners did not know but whom upon inquiry they should have considered. Their responsibility was to learn whether there were persons among the Negroes they did not know who were qualified and available for service. *Hill* v. *Texas,* 316 U. S. 400; *Smith* v. *Texas,* 311 U. S. 128. The elimination of this large group in the community from the commissioners' consideration deprived petitioner of constitutional safeguards as defined in the decisions of this Court." *Id.* at page 298.

Avery v. *Georgia,* 345 U. S. 559 is further authority for petitioner's position. There, although there was no direct

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[41] Although the ratio of Negroes to whites in Montgomery is almost three times as great as that in Cassell (43.6% : 15.5%), the proportion of Negroes on jury panels is almost the same (8.5% maximum: 6.7%).

evidence that Negroes had not been selected for jury service because of race, the system made exclusion possible by employing different colored cards for white and colored jurors. The late Chief Justice Vinson held the system unconstitutional because it facilitated discrimination and because the commissioners did not follow a non-discriminatory course of conduct:

> The jury commissioners, and the other officials responsible for the selection of this panel, were under a constitutional duty to follow a procedure—"a course of conduct"—which would not "operate to discriminate in the selection of jurors on racial grounds." *Hill* v. *Texas*, 316 U. S. 400, 404. If they failed in that duty, then this conviction must be reversed—no matter how strong the evidence of petitioner's guilt. That is the law established by decisions of this Court spanning more than seventy years of interpretation of the meaning of "equal protection."
>
> Petitioner's charge of discrimination in the jury selection in this case springs from the Jury Commissioners' use of white and yellow tickets. Obviously that practice makes it easier for those to discriminate who are of a mind to discriminate. Further, the practice has no authorization in the Georgia statutes—which simply enjoin the Commissioners to select "upright and intelligent men to serve as jurors * * *"

The characteristics which condemned the system in the *Avery* case also doom the system here. They make discrimination easier. They require following a course of conduct which operates to discriminate. They have no authorization in the Alabama statutes. They cause exclusion in fact.

When all this is coupled with the trial judge's ruling that petitioner could not examine the jury box to ascertain the number of colored jurors and to test the general assertions of non-discrimination by the commissioners,[42] (R. 27-28, 34) the conclusion that this is an illegal method is reenforced. Such a combination—jurors chosen on the basis of personal acquaintanceship, and denial of opportunity to examine the jury box—provides the means sought by those who would discriminate. In combination they would permit circumvention of more than seventy years' holdings in this Court. *Avery* v. *Georgia* made clear that this Court would countenance no subterfuge or form of evasion where this constitutional right is involved.

Therefore for the systematic exclusion of Negroes from the jury the judgment below must also fall.

III

Arbitrary exclusion of the general public from all phases of petitioner's trial denied due process of law.

Petitioner submits that he was denied due process of law in that the general public was excluded from his trial. Petitioner further submits that the ban included a time, when, as subsequent events proved, the presence of the public was most necessary: during the *voir dire* when the Chief of Police of the Montgomery Reserve Police Force became a juror, after failing to disclose this aspect of his occupation, when the State knew of his police affiliation and defendant did not (R. 173-177).

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[42] The trial court was authorized to permit the jury rolls to be used in evidence. *State* v. *Miller*, 204 Ala. 234, 236, 85 So. 700 (1920) and cases cited therein.

At the very outset of the proceedings below, over petitioner's constitutional objection, the court excluded the public from the courtroom (R. 2, 10). Originally his relatives (R. 14-15, 19), and the press (R. 3, 11) were excluded along with the rest of the public; however, in response to further objections (R. 15, 22) they were later admitted. Losing on his objection to the exclusion of the general public, petitioner moved that it be limited to the time when prosecutrix testified (R. 15, 20). This too was denied (R. 15). He appealed the permanent exclusion from all phases of the trial to the State Supreme Court on Federal Constitutional grounds, but the appellate court upheld the trial court without discussing the matter.[43]

The right to a public trial, explicitly set forth in the Sixth Amendment and in corresponding provisions of almost every state constitution [44] is one of the most ancient and deep rooted rights of an accused in our legal tradition.[45] It has variously been attributed to immemorial common law usage, historical accident, aversion to Star Chamber proceedings, and reaction to the procedures of the Inquisition,[46] but whatever its origin, the right is so widely and uniformly recognized that it may fairly be described as fundamental. Throughout the English speak-

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[43] See note 2, *supra*.

[44] See note 47, *infra*.

[45] *Re Oliver*, 333 U. S. 257, 266-270.

[46] Note, 49 Col. L. Rev. 110, 111, 115 (1949). See also *Re Oliver*, op. cit. *supra* n. 45 at pages 266-271.

ing world it is not disputed that a trial must be public.[47] It is thus apparent that the right to a public trial is "implicit in the concept of ordered liberty" which is due process of law, *Palko* v. *Connecticut*, 302 U. S. 319, 325. Indeed, this Court expressed its own concurrence in the

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[47] The United States, forty-six states, and at least four members of the British Commonwealth recognize the right.

The United States, and forty-one states recognize it by constitution:

United States Constitution, Sixth Amendment.

Alabama Const. Art. I, §6; Arizona Const. Art. II, Section 24; Arkansas Const. Art. II, Section 10; California Const. Art. I, Section 13; Colorado Const. Art. II, Section 16; Connecticut Const. Art. I, § 9; Delaware Const. Art. I, § 7; Florida Const., Declaration of Rights, Section 11; Georgia Const. Art. I, § 2-105; Idaho Const. Art. I, § 13; Illinois Const. Art. II, § 9; Indiana Const. Art. I, § 13; Iowa Const. Art. I, Section 10; Kansas Const., Bill of Rights, § 10; Kentucky Const. Section 11; Louisiana Const. Article I, § 9; Maine Const. Art. I, Section 6, Michigan Const. Art. II, §19; Minnesota Const. Art. I, §6; Mississippi Const. Art. 3, §26; Missouri Const. Art. I, §18(a); Montana Const. Art. III, §16; Nebraska Const. Art. I, §11; New Jersey Const. Art. I, Par. 10; New Mexico Const. Art. II, §14; North Carolina Const. Article I, §13; North Dakota Const. Art. I, §13; Ohio Const. Art: I, §10; Oklahoma Const. Art. II, §20; Oregon Const. Art. I, §11; Pennsylvania Const. Art. I, §11; Rhode Island Const. Art. I, §10; South Carolina Const. Art. I, §18; South Dakota Const. Art. VI, §7; Tennessee Const. Art. I, §9; Texas Const. Art. I, §10; Utah Const. Art. I, §12; Vermont Const., Ch. I, Art. 10; Washington Const. Art. I, §22; West Virginia Const. Art. III, §14; Wisconsin Const. Art. I, §7.

2 States recognize it by statute: Nev. Comp. Laws Ann. §10654 (1929); 29 McKinney's Cons. Laws of New York, §4.

3 States recognize it inferentially by judicial decision. *Dutton* v. *State*, 123 Md. 373, 386-388, 91 A. 417 (1914); *Commonwealth* v. *Blondin*, 324 Mass. 564, 569, 87 N. E. 2d 455 (1949); *State* v. *Holm*, 67 Wyo. 360, 394, 224 F. 2d 500 (1950).

England:

Scott v. *Scott*, [1913] A. C. 417, 435, 439; *Mahlikilili Dahlamini* v. *The King* [1942] A. C. [P. C.] 583, 590.

Canada:

McPherson v. *McPherson* [1936] A. C. 177, 1 D. L. R. 321.

Australia:

R v. *Hamilton*, [1930] 30 S. R. N. S. W. 277, 278; 47 N. S. W. W. N. 84.

South Africa:

R v. *Ladbrooke* [1931] N. L. R. 475.

sanctity of the public trial as an aspect of due process in *Re Oliver*, 333 U. S. 257, 273, where this Court noted "this nation's historic distrust of secret proceedings, their inherent dangers to freedom, and the universal requirement of our federal and state governments that criminal trials be public * * *"

But petitioner does not rest merely on this broad assertion, for the metes and bounds of the public trial guarantee have been defined more precisely by long and almost universal usage. Thus, there are judicial decisions which recognize that the court may be cleared of unruly persons,[48] and that when the courtroom is filled no additional persons need be admitted.[49] Minors may occasionally be excluded.[50] There are jurisdictions which provide that the court may be cleared during the testimony of a witness such as a minor prosecutrix, who may be unable to testify before a large audience[51] or during the testimony of a

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[48] *State* v. *Scruggs*, 165 La. 842, 870, 116 So. 206 (1928); *State* v. *Genese*, 102 NJL 134, 142, 130 Atl. 642 (1925); *Grimmett* v. *State*, 22 Tex. Cr. 36, 40-41, 2 S. W. 631 (1886); *Doyle* v. *Commonwealth*, 100 Va. 808, 40 S. E. 925 (1902); Archbold's Criminal Pleading, Evidence & Practice 173-174 (31st Edn. 1943).

[49] *State* v. *Saale*, 308 Mo. 573, 580, 274 S. W. 393 (1925). But there may be a duty to provide reasonable accommodations, see *State* v. *Hensley*, 75 Ohio St. 255, 263, 79 N. E. 462 (1906). In Canada it has been held that there is a duty to hold even civil proceedings in a place from which the public will not be deterred, albeit it is not the intention of the court to exclude the public. *McPherson* v. *McPherson*, [1936] A. C. 177, 1 D. L. R. 321.

[50] See *U. S.* v. *Kobli*, 172 F. 2d 919, 923 (C. A. 3d, 1949); *State* v. *Osborne*, 54 Ore. 289, 292, 103 P. 62 (1909); Ky. Rev. Stats. §455.130 (Baldwin's 1943 Rev. Ed.); Nevada Comp. Laws 1929, §8404; Wisc. Stats. §256.14 (1951); Minn. Stat. Ann. §631.04 (1947); Children and Young Persons Act (1933) (23 Geo. 5, C. 12) §36.

[51] *Hogan* v. *State*, 191 Ark. 437, 86 S. W. 2d 931; *Beauchamp* v. *Cahill*, 297 Ky. 505, 508, 180 S. W. 2d 423 (1944); *State* v. *Callahan*, 100 Minn. 63, 67, 110 N. W. 342 (1910); Gen. Stats. No. Car. (Recompiled 1953) §15.166; *State* v. *Damm*, 62 S. D. 123, 130, 252 N. W. 7 (1933); *Grimmett* v. *State*, 2 S. W. 631. Archbold, Criminal Pleading, Evidence & Practice 174, 991-992 (31st Ed. 1943); *R* v. *Ladbrooke*, [1931] N. L. R. 475, 476 (South Africa).

witness who fears he may be harmed.[52] Probably, even those jurisdictions which have been most outspoken in defense of the right to a public trial would permit its limitation in at least some of these circumstances.[53] But except in the case of such limited reasonable instances we find that in the preponderant number of jurisdictions there are no examples of courts sanctioning exclusion of the public from criminal proceedings.

In thirty-four states and three Federal Circuits (the only Circuits to pass on the question) petitioner has found no instances of exclusion of the public from criminal trials except for a limited time and for ends related to the orderly and fair administration of justice,[54] examples of which

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[52] *Commonwealth* v. *Principatti*, 260 Pa. 587, 598, 104 Atl. 53 (1918). Cf. *The King* v. *Governor of Lewes Prison, ex parte Doyle* 2 K. B. 254, 272 (1917).

[53] *E. g., United States* v. *Kobli, supra*, at pages 922-923.

[54] The cases and statutes cited in this footnote indicate, so far as petitioner has been able to find, the outer limits to which each of these thirty-four jurisdictions has permitted or will permit exclusion of the public from criminal trials:

United States v. *Kobli*, 172 F. 2d 919 (C. A. 3d, 1944) (Mann Act, court cleared of all persons except jurors, witnesses, lawyers, press, reversed); *Tanksley* v. *United States*, 145 F. 2d 58 (C. A. 9th, 1944) (rape, court cleared except for parties, counsel, officers of the law, press, relatives of defendant, reversed); *Davis* v. *United States*, 247 F. 394 (C. A. 8th, 1917) (train robbery, court crowded, tension; court cleared except for defendants' relatives, lawyers, press; reversed).

Twenty-one of these states have decided cases or statutes bearing on this point:

Ark.: *Hogan* v. *State*, 191 Ark. 437, 86 S. W. 2d 931 (1935) (court cleared during testimony of embarrassed minor prosecutrix, proper); Cal.: *People* v. *Hartman*, 103 Cal. 242, 37 P. 153 (1894) (rape, all persons excluded during entire trial, reversed); Ky.: *Beauchamp* v. *Cahill*, 297 Ky. 505, 180 S. W. 2d 423 (1944) (contributing to delinquency of minor female, lawyer had right to be present at trial of case related to one in which he is involved; court says it can exclude public during testimony of child witness), Ky. Rev. Stat. Baldwin 1943 Rev. Ed.) §455.130 (children can be excluded during rape trial); Mich.: *People* v. *Yeager*, 113 Mich. 228, 71 N. W. 491 (1897) (assault with intent to rape, all persons excluded except friends and relatives of defendant, reversed; statute permitting ex-

[54] (Continued)

clusion unconstitutional under State Constitution); Mich. Stat. Ann. (1935) Sec. 27.465 (minors can be excluded during indecent testimony); Minn.: *State* v. *Callahan*, 100 Minn. 63, 110 N. W. 342 (1910) (temporary exclusion during embarrassed prosecutrix's testimony proper, but order clearing court throughout trial would have been error); Minn. Stat. Ann. (1947) Sec. 631.04 (minors may be excluded); Mo.: *State* v. *Brooks*, 92 Mo. 542, 5 S. W. 257 (1887) (unauthorized persons excluded public, trial judge ordered public admitted; if he had refused to issue order, or refused request to reexamine jurors selected while public out, would have been error); Mont.: *State* v. *Keeler*, 52 Mont. 205, 156 P. 1080 (1916) (rape, public excluded, except for court officers, lawyers, doctors, reporters, during one day of trial, reversed); Neb.: *Rhoades* v. *State*, 102 Neb. 750, 169 N. W. 433 (1918) (public excluded during testimony of prosecutrix, reversed); Nev.: Nevada Comp. Laws 1929 §8404 (minors may be excluded); N. J.: *State* v. *Genese*, 102 N. J. L. 134, 130 Atl. 642 (1925) (disorderly members of public ejected, proper); N. C.: Gen. Stats. of North Carolina (Recompiled 1953) Sec. 15.166 (in rape trials public may be excluded during testimony of prosecutrix); Ohio: *State* v. *Hensley*, 75 Ohio St. 255, 263, 79 N. E. 462 (1906) (rape, public excluded during taking of "immoral" testimony, press remains, reversed); Okla.: *Neal* v. *State*, 86 Okla. Cr. 283, 192 P. 2d 294 (1948) (prostitution, public excluded, reversed); Ore.: *State* v. *Osborne*, 54 Ore. 289, 103 P. 62 (1909) (public excluded, reversed); Penna.: *Commonwealth* v. *Principatti*, 260 Pa. 587, 598, 104 Atl. 53 (1918) (murder, exclusion during testimony of frightened witness would have been proper); S. C.: *State* v. *Adams*, 100 S. C. 43, 84 S. E. 368 (1915) (bastardy, exclusion of boys and Negroes (!) proper); S. D.: *State* v. *Davis*, 62 S. D. 123, 252 N. W. 7 (rape, public excluded during testimony of embarrassed, frightened, minor prosecutrix, approved); Tex.: *Grimmett* v. *State*, 22 Tex. Cr. 36, 2 S. W. 631 (1886) (exclusion during testimony of embarrassed minor prosecutrix, laughter in courtroom, proper); Utah: *State* v. *Bonza*, 72 Utah 177, 269 P. 480 (1928) (rape, public excluded, statute permitting this violates state constitution, reversed); Wash.: *State* v. *Marsh*, 126 Wash. 142, 217 P. 705 (1923) (contributing to delinquency of minor, public excluded, reversed); Wisc.: Wisc. Stats. §256.14 (1951) (minors may be excluded).

Thirteen states—Conn., Del., Ill., Ind., Ia., Kan., Me., N. H., N. M., R. I., Tenn., Vt., W. Va.—have neither cases nor statutes which substantially bear on the meaning of the words "public trial" in criminal cases. However, as to them one may properly assume that absence of litigation indicates absence of exclusion in fact, for all but one of these (New Hampshire) guarantee public trials, see note 47, *supra*, and if exclusion were practiced it would present a colorable issue which one might expect to be litigated at least once.

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were given above (see pp. 42-43, *supra*). Nor are these outer limits on the power to exclude exceeded in England,[55] Canada,[56] Australia [57] and South Africa.[58]

Two states, included among the thirty-four above have held that statutes which restrict the right to a public trial are unconstitutional under their state constitutions.[59]

The situation in the remaining fourteen states is not uniformly clear. However, in fact, only six states have upheld an actual blanket exclusion of the public from all phases of a trial over a defendant's objection.[60]

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[55] Archbold's Criminal Pleading, Evidence & Practice (31st Edn. 1943), pages 173-174. (Trial must be in open court but in certain classes of cases court may exclude women and young persons or eject persons who disturb proceedings; while child testifies in case of offense against decency court may be cleared); 8 Halsbury's Laws of England (2d edn.) 526-527; *Scott* v. *Scott*, [1913] A. C. 417 (H. L.); *Mahlikilili Dahlamini* v. *The King* [1942] A. C. 583 [P. C.]; *Daubney* v. *Cooper*, 10 B & C 237, 240 (1829); *The King* v. *Governor of Lewes Prison, ex parte Doyle* 2 K. B. 254, 272 (1917); *Collier* v. *Hicks*, [1831] 2 B & Ad. 663, 668; *Hearts of Oak Assurance Co. Ltd.* v. *A. G.* [1931] 2 Ch. 370, 385, 397.

[56] *McPherson* v. *McPherson*, [1936] A. C. 177; *R* v. *Neff*, [1947] 1 W. W. R. 640, 645, 88 Can. C. C. 199.

[57] *R* v. *Hamilton*, [1929] 30 S. R. N. S. W. 277, 47 N. S. W. W. N. 84.

[58] *R* v. *Ladbrooke*, [1931] N. L. R. 475.

[59] Michigan and Utah (*People* v. *Yeager*, *supra*, *People* v. *Bonza*, *supra*.)

[60] Seven states have statutes permitting exclusion of the public generally during all phases of some criminal trials: Code of Ala. 1940 Title 15 § 320, Ala. Const. of 1901 § 169; Georgia Code of 1933 § 81-1006; Mass. G. L. (Ter. Ed.) c. 278, § 16A (but only where prosecutrix is under 18); Miss. Const. Art. 3, § 26; 29 McKinney's Cons. Laws of N. Y. § 4; N. Dak. Rev. Code of 1943 27-0102; Code of Va. 1950, § 19-219; five states which have no statutes sanctioning blanket exclusion have endorsed it by judicial decision; *Keddington* v. *State*, 19 Ariz. 457, 172 P. 273 (1918); *Benedict* v. *People*, 23 Colo. 126, 46 P. 637 (1896); *Robertson* v. *State*, 64 Fla. 437, 60 So. 118 (1912); *State* v. *Johnson*, 26 Idaho 609, 144 P. 784 (1941); *Dutton* v. *State*, 123 Md. 373, 91 Atl. 417 (1914).

Thus, courts in the English speaking world almost uniformly refrain from excluding the public from the trials of criminal cases in any manner not related to the fair and orderly administration of justice. Indeed, petitioner proposed that the exclusion in this case be limited to the time of prosecutrix's testimony, an exclusion which might be justified as reasonably necessary, but the courts below ordered and upheld blanket exclusion of the general public in a manner that had no reasonable relation to this end.

Exclusion like that practiced in petitioner's trial has been upheld in Alabama as necessary to "restrict, in the interest of public morality attendance at trials of a salacious nature" *Weaver* v. *State*, 33 Ala. App. 207, 210, 31 So. 2d 593 (1947). Respondents seek to justify the exclusion in this case on these grounds,[61] although they suggest that an additional reason may have been to spare prosecutrix embarrassment. But even if one accepts the ques-

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[60] (Continued)

It should be noted that in these twelve states which appear to have permitted blanket exclusion of the public, at least five have upheld such exclusion only in cases where it was particularly noted that defendants did not object to the exclusion. *Dutton* v. *State, supra*; *Keddington* v. *State, supra*, at p. 462; *Benedict* v. *People, supra*, at p. 129; *State* v. *Nyhus*, 19 N. D. 326, 329, 124 N. W. 71 (1909); *Hampton* v. *Commonwealth*, 190 Va. 531, 58 S. E. 2d 288 (1950); (in this case it does not appear that objection was made, or that the exclusion order was assigned as error on appeal); in another of the twelve the challenged exclusion was in fact temporary, during the testimony of a frightened prosecutrix, *Moore* v. *State*, 151 Ga. 648, 651, 108 S. E. 47 (1921).

Two states have affirmed judgment following trials in which there were exclusion orders, but have noted in these cases, that there was no appreciable exclusion in fact. *State* v. *Croak*, 167 La. 92, 95, 118 So. 703 (1928) (those who asked to be admitted were admitted); *State* v. *Holm*, 67 Wyo. 360, 394, 224 P. 2d 500 (1950) (fair sized portion public present).

[61] Brief of Respondents in Opposition to Petition for Writ of Certiorari, p. 10.

tionable proposition [62] that courts may act as censors of public morals during the conduct of criminal cases, there was no need to exclude the public during all of the proceedings below. Most assurredly, for whatever end, there was no justification for excluding the public prior to the taking of testimony and during the empanelling of the jury.

In fact, the record shows that depriving petitioner of this valuable safeguard prior to the empanelling of the jury [63] may have well contributed to the empanelling of juror Page, the Chief of Police of the Montgomery Reserv Police Force (R. 172-173).[64] If the public had been present during this time it may be doubted whether Page would have failed to disclose his connection with the police force when questioned on the *voir dire*. At any rate, some member of the public might well have informed petitioner that Page was Chief of the Reserve Police and had been working on this case or—as even the State concedes—on cases of "alleged Negro rapists". One classic justification for the public trial guarantee is that it affords defendants the opportunity to receive relevant information from members of the public present at the trial, *Tanksley* v. *United States*, 145 F. 2d 58, 59 (C. A. 9th, 1944).[65]

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[62] See, Note 35 Cornell L. Q., 395, 399 (1949).

[63] Of course, the right to have the public present during the selection of the jury is subsumed under the right to a public trial. *United States v. Sorrentino*, 175 F. 2d 721 (C. A. 3d, 1949); See *State* v. *Brooks*, 92 Mo. 542, 573, 5 S. W. 257 (1887).

[64] Page was under no duty to serve. As a police officer on active duty, he could have requested and have been granted an excuse. *Pierson* v. *State*, 99 Ala. 148, 150, 13 So. 550 (1891).

[65] Other reasons for the presence of the public is that "[t]he knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power"; and that (fn. 24) "[t]he spectators learn about their government and acquire confidence in their judicial remedies" *Re Oliver, supra*, at p. 270.

Armed with accurate information concerning Page, it appears that petitioner could have successfuly challenged him for cause. *Shapiro* v. *City of Birmingham*, 30 Ala. App. 563, 565, 10 So. 2d 38 (1942). Certainly, having the information he would have and could have at least challenged Page peremptorily (R. 172) *Leach* v. *State*, 245 Ala. 539, 540, 18 So. 2d 289 (1944). Instead, unchallenged, Page sat in judgment on the same defendant whom, there was an offer to prove, he had helped tracked down and arrest (R. 172-173). He sat in judgment on the testimony and conduct of a half dozen or more of his fellow police officers, officials and detectives (R. 89, 96, 97, 99, 155, 157, 158). His commitment to the prosecution was that of the Mayor/judge in *Tumey* v. *Ohio*, 273 U. S. 510, who was barred by the Fourteenth Amendment from judging defendants for whose prosecution as a member of the Executive he was ultimately responsible. As Mr. Chief Justice Taft held in that case:

> "A situation in which an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, involves a lack of due process of law in the trial of defendants charged with crimes before him." *Tumey* v. *Ohio*, 273 U. S. 510, 534.

The State Supreme Court (R. 193) and the trial court (R. 173) held that the motion for a mistrial on the ground that Page was Chief of Police was properly denied because it came too late. However, lack of diligence does not appear to have been the cause of the delay: Petitioner made the motion as soon as he obtained the information (R. 172). Petitioner asked a question as to occupation on the *voir dire* (R. 172), and Page did not disclose his police affiliation (R. 172). Moreover, the Solicitor knew that Page was on active duty with the police (R. 172) and as a quasi-judicial

officer was bound to disclose it.[66] But, the Solicitor who believed that Page's connection with the police reserve was no more relevant than his own with the naval reserve, said nothing. Thus Page was empanelled as a member of the jury while the public was excluded from the courtroom. It was not until almost the end of the trial that petitioner learned the true facts at which time he brought them to the attention of the court and unsuccessfully moved for a mistrial (R. 172). Petitioner, therefore, was tried by a juror who had an interest in his conviction which was concealed by the juror and by the State and of which petitioner, in the absence of the public, remained ignorant until such time as he was effectively blocked from making objection.

The fact that the public was arbitrarily barred from all phases of petitioner's trial requires reversal of the judgment below. The presence of the Chief of the Reserve Police Force on the jury emphasizes that the denial of this constitutional right may always be a grave matter. For this reason too, petitioner submits the judgment below must fall.

Conclusion

Petitioner has set forth in his argument a number of reasons why the judgment below should be reversed by this Court: The introduction into evidence of coerced confessions, denial of an opportunity to present to the jury the method by which these confessions were exacted, erroneous reliance upon *Stein* v. *New York*; systematic exclusion of Negroes from the jury; exclusion of the public from all phases of the trial.

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[66] Cf. *Mooney* v. *Holohan*, 294 U. S. 103, 114-115; *Berger* v. *United States*, 295 U. S. 78, 88; *Jones* v. *State*, 23 Ala. App. 493, 127 So. 681, 682.

As in all cases where a number of errors occur these could not but have a cumulative effect. However, the nature of these errors was such that in combination they acted powerfully to rob the proceedings below of the essential open quality which characterizes criminal proceedings in the United States, and indeed throughout the English speaking world. Thus, the conviction was based upon coerced statements obtained *in camera*; the method whereby the confessions were exacted was concealed from the jury; the jury itself which should have been drawn from a cross-section of the community was restricted in membership almost entirely to members of the dominant racial group in the community—indeed on it sat the Chief of the Reserve Police Force of Montgomery County; the general public was barred from all phases of the trial. The proceedings were closed, not open, in at least five vital respects.

Therefore, because of the denial of each of the constitutional rights complained of in this brief and because of their cumulative effect petitioner submits that the judgment below should be reversed.

Respectfully submitted,

THURGOOD MARSHALL,
ROBERT L. CARTER,
JACK GREENBERG,
Counsel for Petitioner.

ELWOOD H. CHISOLM,
PETER A. HALL,
DAVID E. PINSKY,
LOUIS H. POLLAK,
of Counsel.

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HAROLD B. WILLEY

IN THE

Supreme Court of the United States

October Term, 1954
No. 120

JEREMIAH REEVES, JR.,
Petitioner,

v.

STATE OF ALABAMA
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

REPLY BRIEF FOR THE PETITIONER

THURGOOD MARSHALL,
ROBERT L. CARTER,
JACK GREENBERG,
Counsel for Petitioner.

ELWOOD H. CHISOLM,
PETER A. HALL,
DAVID E. PINSKY,
LOUIS H. POLLAK,
of Counsel.

SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13, BEEKMAN 3-2320
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REPLY BRIEF FOR THE PETITIONER

ARGUMENT

The argument in the reply brief shall follow the sequence of argument used in petitioner's and respondent's briefs.

I

A.

The "confessions" which were introduced into evidence had been coerced.

Respondent's brief nowhere challenges that petitioner was subjected to unconstitutional coercion at Kilby. Instead, it rests on assertions that (a) the inculpatory statements were not exacted in the course of "formal" questioning, (b) that the statements and the coercion occurred in different places, and (c) that in one instance the questioning was by a psychiatrist and the police were not

present. It ignores the reality of petitioner's age (17), race (Negro), education (8th grade) and emotional instability, the duration and character of the threats and promises made in the presence of the electric chair, the crime of which he was accused, the effect of already having succumbed to pressure to the extent of making a "confession" (which the State did not offer into evidence), the very short time between the coercion at Kilby and the statements made at the City Jail, the fact that petitioner was still incommunicado, the continued presence of the police [1] and other factors.[2]

Formality of interrogation has no relationship to the requirements of the Fourteenth Amendment and petitioner has difficulty in finding a case where this Court found unconstitutional coercion in which the interrogation could be characterized as "formal". As to the gap of time and place, Kilby and the City Jail are only a fifteen minute automobile ride apart (R. 140); there was the gap of but an hour or so between the first inculpatory statement following the coercion and the statements at the City Jail. Indeed, petitioner's trip from Kilby to the City was but a continuation of his treatment at Kilby—with no respite—for he was taken into town only to be identified and to repeat what he may have said at Kilby.

There is no evidence that at any time any of the coercive influences upon petitioner were alleviated.[3] The State produced nothing and now merely asks this Court to accept its speculation.

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[1] These factors are discussed in detail and the record concerning them is thoroughly canvassed in petitioner's brief, pp. 19-21, 22.

[2] As pointed out in petitioner's brief, while at Kilby he was stripped, photographed, his blood was tapped and spinal fluid was taken from him.

[3] The only change, which loses significance when considered along with all the other factors, is that his parents were permitted to see him at 5:00 p. m., Wednesday following the statements at the City Jail and prior to the statements to Clark and Dr. Bazar.

Lyons v. *Oklahoma*, 322 U. S. 596, the case upon which respondent relies was completely unlike the one now at bar. Lyons was a completely different type of person from petitioner and his treatment differed in significant respects: He was a married man over twenty-one years of age. This Court explicitly noted that it did not appear that he was uneducated or of subnormal intelligence. In addition it did not appear, as it does in this case, that the defendant was emotionally unstable. Lyons had already served a term in the State penitentiary. He had not been held incommunicado—his family had actually visited him prior to his having confessed. The time gap between the coerced first confession and the second confession was from 2:30 a. m. until between 8:00 p. m. and 11:00 p. m. of the same day. Morever, this Court in the *Lyons* case took occasion to point out that the confession was made before a person whom Lyons had reason to trust.

B.

Even if they were not coerced, the confession issue was not fairly tried and reviewed.

In answer to point IB respondent merely avers that the trial judge had discretion to pass upon the admissibility of the inculpatory statements as a *preliminary* matter. Even if this general assertion were true in the context of this case, it is apparently conceded that the jury had the right and duty to pass upon at least the weight to be accorded the confessions. They were so instructed (Brief of respondents, p. 20). There is not a jurisdiction which would deny to the jury this right and duty. (See, petitioner's brief, pp. 25-26). But, here the jury heard confessions and heard of them, and was not permitted to hear relevant and weighty evidence indicating that crucial testimony—the confessions—were unconstitutionally coerced and utterly untrustworthy. Indeed, the trial judge himself was unable to fairly pass upon petitioner's motion that the confessions be excluded, for he heard only proffers, and refused to hear the testimony of witnesses.

And it should be particularly noted that respondent completely ignores that prosecutrix testified before the jury concerning the typewritten confession which was handed to her upon her arrival at the City Jail. Concerning this confession it is not and cannot seriously be contended that there was a hiatus which renders irrelevant the coercion inflicted at Kilby.

C.

Respondent misinterprets *Stein* v. *New York*.

Petitioner submits that respondent has not addressed itself to the issue of whether *Stein* v. *New York* was properly interpreted by the courts below apart from making a bare assertion to that effect. Instead respondent merely reiterates that petitioner was proven guilty apart from the alleged confessions. That the conviction rests on nothing but the confessions and their fruits was demonstrated in petitioner's brief (p. 30, fn. 34). That the *Stein* case is inapplicable was likewise shown (Petitioner's brief, pp. 30-32). Petitioner submits that the rule proposed by respondent could not be adopted in any civilized country at this stage of history. Petitioner would merely like to add some words by Chief Justice Stone in *Hill* v. *Texas*, 316 U. S. 400, 406 which although it dealt with discrimination in jury selection, are pertinent here:

> ". . . no state is at liberty to impose upon one charged with crime a discrimination in its trial procedure which the Constitution . . . forbid(s). Nor is this Court at liberty to grant or withhold the benefits of equal protection, which the Constitution commands for all, merely as we may deem the defendant innocent or guilty. . . . It is the state's function, not ours, to assess the evidence against a defendant. But it is our duty as well as the state's to see to it that throughout the procedure for bringing him to justice he shall enjoy the protection which the Constitution guarantees.

> . . . [I]n this case . . . the conviction cannot stand because the Constitution prohibits the procedure by which it was obtained. Equal protection of the laws is something more than an abstract right. It is a command which the state must respect, the benefits of which every person may demand. Not the least merit of our constitutional system is that its safeguards extend to all—the least deserving as well as the most virtuous."

II

There was systematic exclusion of Negroes from jury panels in Montgomery County.

On the question of systematic exclusion of Negroes from the jury, respondent does not challenge any statement of the facts by petitioner. However, respondent makes assertions of fact that have no support anywhere in the Record.[4] Respondent states that Judge Carter ". . . testified that the jury commission has for the past several years regularly solicited the names of Negro citizens from Negro clubs and other sources in an effort to select and qualify as many Negro citizens as possible for jury service" (Brief of respondents, p. 23). No such testimony is in the Record. In fact, although Judge Carter testified that he "once went to the (Negro) clubs" (R. 28), he later flatly asserted, "I never go to the Negro clubs. The ones I have asked to help me have been somebody I know, Negroes I know" (R. 33). And he said "I don't go in them. I do know—this is way, way back—I do know one club. We had several members out of that club. In fact,

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[4] Respondent does not, in referring to the Record in this section of its brief accompany its references with a specific Record page number. It merely sets forth the pages within which the testimony of the witnesses to whom it refers appears *e. g.*, "Judge Carter's testimony (R. 28-36)", Judge Jones' testimony "(R. 37-39)". Brief of respondents pages 23 and 24.

we had at least twenty out of the club. That is when that meets in an insurance office. They call it the Montgomery Improvement Association or Society. It might be the Atlanta Insurance Company . . ." (R. 33-34).[5]

This is the antithesis of "regularly solicit(ing) the names of Negro citizens from Negro clubs. . . ."

Respondent asserts that Judge Carter testified that names of Negroes were obtained from "other sources" (Brief p. 23). In fact he testified: "The ones I have asked to help me have been somebody I know, Negroes I know" (R. 33). And he also testified: "It is particularly hard for us to put in Negroes without knowing them" (R. 29). Thus the "other sources" are merely the personal contacts which petitioner assailed in his brief, a method which had to lead to the shocking and disproportionately small participation of Negroes on juries in Montgomery County.

Respondent states that the Clerk of the Court, John R. Matthews, testified "that the jury commissioners have regularly secured the names of Negroes qualified for jury service from Negro churches and labor organizations" (Brief p. 24). Petitioner has been unable to find such testimony anywhere in the record. Witness Matthews did testify that "I have asked different members of the Negro race about names for the jury box" (R. 36), although it does not appear that any of such persons furnished lists (R. 36-37). He further testified "It is not because we have tried to leave them out, it is because we just don't know everybody" (R. 37). This confirms Judge Carter's testimony that jurors were chosen on the basis of personal contact. But if the Alabama statute were followed (See petitioner's brief, p. 33), and registration and tax lists were consulted along with city directories and telephone

[5] Upon the occasion of this testimony petitioner was denied a motion to examine the names in the jury box to test this assertion of the commissioner (R. 34).

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directories the commissioners would not have to "know them" (Negroes) or "know everybody."

If Negroes and whites were selected for jury service on the same basis, and if no partiality necessarily stemmed from the method of selection, one would expect that the proportion of Negroes serving on juries would approximate the proportion of Negroes in the population.[6] This is not to say that racial proportional representation is what the Constitution requires. Such a method of selection, dependent upon race, is as constitutionally abhorrent as systematic exclusion based upon race. But a vast discrepancy between the proportion of Negroes in the population and on jury panels naturally raises the question of the reason for the difference. In *Brown* v. *Allen*, 344 U. S. 443, 472, it was accounted for by the difference in the number of Negroes and whites on tax lists from which jurors were chosen, which was explainable by "inequality of educational and economic opportunities" *Id.* at 473. In *Cassell* v. *Texas*, 339 U. S. 282, 285-286, there was a discrepancy explainable by the composition of the voting lists (which contained only names of poll-tax payers and which was therefore subject to the influence of the economic and educational factors operative in *Brown* v. *Allen*).

In this case, not only is the disproportion far greater than in either of the above cases, but it is not explainable by the application of any reasonable standard. Respondent's brief, page 5 set forth the pertinent statute which requires that the commissioners must place on the roll

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[6] In this connection, petitioner desires to point out that the disproportion is not merely between 8.5% Negroes on jury panels and 43.6% Negroes in population as even respondent concedes, but is more severe; the 8.5% represents an optimum figure. No panel has had more than 3 Negroes on it, but at least some have had fewer or none. For the detailed arithmetic see petitioner's brief (p. 34, fn. 39).

"the names of all male citizens"—honesty, intelligence, integrity, good character, sound judgment are required; jurors should be free of physical infirmity, may not be habitual drunkards, and must be free of moral turpitude. Inability to read English is excusable. It is to be presumed, petitioner submits, that Negroes are as qualified as whites under these standards. *Hill* v. *Texas*, 316 U. S. 400, 404.

Respondent's only effort to explain the huge differential is a suggestion that it may be explainable by the statute specifying persons who may be exempted from jury service set forth on page 4 of respondent's brief (Respondent's brief, pp. 26-27). Apart from the fact that this statute appears only to *excuse* persons from jury duty, and not from having their names placed on the rolls, petitioner submits that such an argument is frivolous for the very reasons by which this Court found reasonable the disproportion in the *Cassell* and *Brown* cases. Economic and educational factors would tend to reduce the proportion of whites, not Negroes, on jury panels. Exemptions may be obtained by judges, lawyers, officers of the federal and state governments, members of various professions such as doctors, and lawyers, engineers and operators of various modes of transportation; newspaper and radio men, etc. It certainly can hardly be contended that more than five times more Negroes than white persons are engaged in these pursuits in Montgomery County, Alabama.

III

Exclusion of the general public denied due process of law and was substantially related to petitioner's opportunity to defend.

Respondent's brief, Point III avers that the trial was in fact public because "a few newspaper reporters" were present (Brief, p. 32); the testimony was stenographically transcribed (Brief, p. 33); court officials and lawyers were in the courtroom; and petitioner's relatives were permitted to attend. Respondent further avers that petitioner's main reliance is on *re Oliver*, 333 U. S. 257 and analyzes that case in detail to show that the facts there were in many respects different from those in the instant case.

However, petitioner's reliance upon *re Oliver* extends only to the point which respondent concedes it represents: a criminal trial in order to afford due process of law must be public. Petitioner submits that the meaning of the word "public" was not definitively established in the *Oliver* case and that those who were permitted to attend petitioner's trial did not constitute the "public". To more precisely define the public trial requirement petitioner has surveyed practice, legislation and judicial decisions throughout the United States and the English speaking world (See Brief of Petitioner, pp. 42-46) which clearly show that the access of the *general* public to a trial may be curtailed only up to a certain point—after which a trial can no longer be termed public.

That limit is transgressed by *unreasonable* exclusion, exclusion not reasonably related to the sound and fair administration of justice. Therefore there are cases in which the public has properly been excluded following a disturbance in the courtroom, or during the testimony of prosecutrix who may be too embarrassed to testify, or during the testimony of a witness who fears revenge; simi-

larly children may be excluded. In only a few isolated instances has a blanket exclusion of the general public throughout a trial been upheld over a defendant's objection. The cases are discussed and developed at length in petitioner's brief, pp. 42-46.

Most of the cases cited in respondent's brief, p. 36, fn. 23, to support a textual assertion that the general public may be excluded throughout a trial either afford no such support or uphold petitioner's position. Thus, *Reagan* v. *U. S.*, 202 F. 488 (C. A. 9th, 1913), has been overruled or completely stripped of vitality by *Tanksley* v. *U. S.*, 145 F. 2d 58 (C. A. 9th, 1944). *Sawyer* v. *Duffy*, 60 Fed. Supp. 852 (D. C. Cal. 1945), if it can be said to contain any holding on the merits at all, is based upon (a) the *Reagan* case, *supra*, (b) *Callahan* v. *U. S.*, 240 Fed. 683 (C. A. 9th, 1917), which received the same treatment in the *Tanksley* case as did the *Reagan* case, and (c) *People* v. *Swafford*, 65 Cal. 223, 3 Pac. 809 (1884), discussed *infra*, which has been overruled. *People* v. *Swafford*, has been overruled by *People* v. *Hartman*, 103 Cal. 242, 37 Pac. 153 (1894). *Keddington* v. *State*, 19 Ariz. 457, 172 Pac. 273 (1918), was a case where there was no objection to the exclusion there practiced. *Benedict* v. *People*, 23 Colo. 126, 46 Pac. 637 (1896), was a case in which defendant did not object. *Moore* v. *State*, 151 Ga. 648, 108 S. E. 46 (1921), was a case which involved exclusion only during the testimony of prosecutrix. *Baker* v. *Utecht*, 161 F. 2d 304 (C. A. 8th, 1947), was a case which involved exclusion only during the testimony of prosecutrix. *State* v. *Callahan*, 100 Minn. 63, 110 N. W. 342 (1907), was a case involving exclusion only during the testimony of prosecutrix.

Only *Commonwealth* v. *Blondin*, 324 Mass. 564, 87 N. E. 2d 455 (1949), *Melanson* v. *O'Brien*, 91 F. 2d 963 (1st Cir., 1951), which was a habeas corpus proceeding collateral to the *Blondin* case, *Robertson* v. *State*, 64 Fla. 437, 16 So. 118 (1912) and *Sallie* v. *State*, 155 Miss. 547, 124 So. 650

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(1929), take the same position as respondent. These cases represent half of the small minority of jurisdictions which go to such an extreme. They have been discussed in petitioner's brief pp. 45-46 along with the overwhelming majority throughout the English speaking world which employs the procedure which petitioner has demanded as fundamental from the outset of the proceedings herein. Petitioner submits that the cases in these minority jurisdictions have either received only passing consideration or are largely based upon authority which has been overruled, or which does not go so far as respondent advocates. Thus *Robertson* v. *State*, relies on the *Swafford* case, *supra*, upon *Grimmett* v. *State*, 22 Tex. 36, 2 S. W. 631 (1886), which involved exclusion only during the testimony of a frightened prosecutrix and upon *People* v. *Hall*, 51 App. Div. 57, 64 N. Y. S. 433 (1900), a New York case of dubious vitality, see *People* v. *Jelke*, 130 N. Y. S. 2d 662 (1954).

Petitioner submits that by any test of due process of law the exclusion which was practiced in this case was violative of the Fourteenth Amendment. Of course none of the generally utilized approaches are mutually exclusive. They are all directed to the goal of ascertaining what constitutes basic fairness.

1. "What is due process of law may be ascertained by an examination of those settled usages and modes of proceedings existing in the common and statute law of England before the emigration of our ancestors, and shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country." *Twining* v. *New Jersey*, 211 U. S. 78, 99. In England there was a clear right to a public trial at least as early as 1565 and at no time in English history does it appear that that right has been curtailed beyond a point advocated by petitioner here. Thus, Sir Thomas Smith

in his *De Republica Anglorum* wrote that the process of English justice of his day contemplated:

> "[e]vidence or writing being shewed, witnesses be heard and sworn before them not after the fashion of the Civil Law but openly that not only the judges but the parties and as many as may be present may hear what each witness does say."[7]

The English and Commonwealth cases are set forth in petitioner's brief on p. 45, fn. 55. This rule has been uniform for at least as long as recorded history discloses.

Colonial American practice does not appear to have been different. Early state constitutions required that defendant in criminal cases be afforded public trials.[8] It does not appear that in any state during colonial times either statutory or constitutional provisions abolished or in any way curtailed the right to a public trial as it was and is understood at English common law.

2. Another method of ascertaining due process of law is to examine the prevailing practice in the English speaking world. See *Wolf* v. *Colorado*, 338 U. S. 25, 28-29. This has been done in petitioner's brief, pp. 42-46, and it appears that almost uniformly the rule is the one which petitioner submits is the only permissible one.

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[7] Book 2, Ch. 15, p. 79 (Aleston's Ed'n.). To the same effect see Hale's *The History of the Common Law of England* (1716): "The excellency of this open course of evidence to the jury appears in these particulars * * * that it is public * * *" Ch. 12, p. 343. (Runnington's Ed'n. 1820). See also Blackstone's Commentaries Vol. 3, Ch. 23, p. 375 (Jones' Ed'n. 1915, p. 1983); Bentham's Treatise on Judicial Evidence, p. 522 (1827 ed'n.).

[8] Pennsylvania Constitution of 1776, Thorpe, American Charters, Constitutions and Organic Laws, Vol. 5, pp. 2783, 3083. North Carolina Constitution 1776, Id. at Vol. 4, p. 2455. Delaware Constitution of 1792, Id. at Vol. 7, p. 3113.

3. A third method is to ascertain whether the practice complained of offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental. *Snyder* v. *Massachusetts*, 291 U. S. 97, 106. If the right to a public trial is—as it is conceded—fundamental, then of course it may not be curtailed except for exceedingly good reason shown and then only in the narrowest possible manner. Prevailing practice and reason informs us that the mere fact that a defendant is prosecuted for rape should not justify stripping him of this all-important safeguard. Indeed, in a case involving a charge of rape, which is one of the most difficult charges to defend, defendant *a fortiori* requires every constitutional guarantee. If the public had been excluded only during the testimony of prosecutrix, as petitioner has consistently urged, the general rule would have been satisfied, and the interests which the state sought to serve (shielding prosecutrix from embarrassment and the public from the recitation of the details of the rape) would have been reasonably protected. Exclusion beyond the point of utter necessity shocks a sense of justice.

To find that the practice complained of denies due process it must be shown that it "bears, or may be fairly assured to bear a relation, reasonably substantial to his opportunity to defend." *Snyder* v. *Massachusetts*, 291 U. S. 97, 106. That exclusion of the public bears such a relationship has not only been asserted by the cases and authorities from the earliest times, but in this case there is a specific instance of what the absence of the public means: Juror Page, the Chief of the Reserve Police Force was on the jury. It may be doubted that he ever would have been sworn and seated throughout the trial under the gaze of members of the general public, a reason for the public trial which is repeatedly set forth by the authorities.[9]

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[9] E.g. Blackstone, op. cit. *supra*, n. 7; *re Oliver*, 333 U. S. 257, 270; *Tanksley* v. *United States*, 145 F. 2d 58, 59 (C. A. 9th, 1944).

As to the Chief of Police of the Reserve Police Force of Montgomery, respondent in its brief asserts that "the court offered petitioner a hearing to prove the jury was biased (R. 172, 173); but counsel stated he had no evidence to offer but wished to question the juror (R. 173)" (Brief of respondent, p. 13). The only facts necessary to demonstrate the deleterious nature of the denial of the right to a public trial were conceded by the State when it admitted that Juror Page was a member of the Reserve Police Force, had worked on cases and that the State had knowledge of this. No further bias need have been shown to warrant a challenge for cause, and certainly there was information enough to warrant a peremptory challenge.[10] Thus the statement in respondent's brief is misleading.

CONCLUSION

Petitioner respectfully submits that for the reasons set forth herein and in petitioner's original brief the judgment below must be reversed.

Respectfully submitted,

THURGOOD MARSHALL,
ROBERT L. CARTER,
JACK GREENBERG,
Counsel for Petitioner.

ELWOOD H. CHISOLM,
PETER A. HALL,
DAVID E. PINSKY,
LOUIS H. POLLAK,
of Counsel.

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[10] See discussion of the authorities in petitioner's brief p. 48.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

NO. 120

JEREMIAH REEVES, JR.,
Petitioner

v.

STATE OF ALABAMA,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF AND ARGUMENT OF RESPONDENT

SI GARRETT
Attorney General of Alabama
ROBERT STRAUB
Assistant Attorney General
ROBERT B. STEWART
of Counsel
Counsel for Respondent

SAMUEL KAUFMAN, II
of Counsel on the Brief

WETUMPKA PRINTING CO., WETUMPKA, ALABAMA

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IN THE

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NO. 120

JEREMIAH REEVES, JR.,

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v.

STATE OF ALABAMA,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Supreme Court of Alabama (R. 185) is reported at 260 Ala. 66, 68 So. 2d 14.

JURISDICTION

The judgment of the ~~Superior~~ Circuit Court of Montgomery County was affirmed by the Supreme Court of Alabama on August 6, 1953. Rehearing was denied November 27, 1953. Time for filing petition for writ of certiorari was extended to and including March 12, 1954 by order of the Chief Justice dated February 17, 1954. Petition for writ of certiorari and motion for leave to proceed in *forma pauperis*

were granted on June 7, 1954. The jurisdiction of this Court was invoked under 28 U. S. C. § 1527(3), petitioner having asserted in the courts below rights, privileges and immunities conferred by the Constitution of the United States.

QUESTIONS PRESENTED

I.

A.

Whether the confessions or inculpatory statements which the State was allowed to introduce in evidence were coerced and involuntary, depriving petitioner of due process of law under the Fourteenth Amendment.

B.

Whether the trial court committed reversible error in refusing to permit petitioner to introduce evidence of events which occurred before the confessions or inculpatory statements were made, in a different place and before different persons, in order to show that they were coerced and involuntary.

C.

Whether the Supreme Court of Alabama committed reversible error in its application of *Stein v. New York*, to the instant case.

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II.

Whether there was systematic exclusion of Negroes by reason of their race, creed or color from the jury panels of Montgomery County, Alabama, where the jury commissioners made diligent efforts to procure the names of Negroes for jury duty, but where the jury panels contained a smaller proportion of Negroes to whites, than there were Negroes to whites in the community.

III.

Whether the petitioner was denied due process of law, where under authority of Article 6, Section 169, Alabama Constitution of 1901, and Title 15, Section 320, Code of Alabama 1940, the general public was excluded from the courtroom, although members of the press, petitioner's family, a stenographer to assist petitioner, members of the bar, jurors, witnesses and court officials were allowed to remain.

STATUTES INVOLVED

In addition to those set out in Petitioner's Brief, pages 3 and 4.

Title 30, Section 3, Code of Alabama 1940, as amended by Act No. 243, General Acts of 1943, page 197.

> The following persons are exempt from jury duty, unless by their own consent: Judges of the several courts; attorneys at law during the time they practice their profession; officers of the United States; officers of the executive department of the state government; sheriffs and their deputies; clerks of the courts and county commissioners; regularly licensed and practicing physicians; dentists; pharmacists; optometrists; teachers while actually engaged in teaching; actuaries while actually engaged in their profession; officers and regularly licensed engineers of any boat plying the waters of this state; passenger bus driver-operators, and driver-operators of motor-vehicles hauling freight for hire under the supervision of the Alabama public service commission; railroad engineers, locomotive firemen, conductors, train dispatchers, bus dispatchers, railroad station agents, and telegraph operators when actually in sole charge of an office; newspaper reporters while engaged in the discharge of their duties as such; regularly licensed embalmers while actually engaged in their profession; radio

broadcasting engineers and announcers when engaged in the regular performance of their duties; the superintendents, physicians, and all regular employees of the Bryce hospital in Tuscaloosa county and the Searcy hospital in Mobile county; officers and enlisted men of the national guard and naval militia of Alabama, during their terms of service; and convict and prison guards while engaged in the discharge of their duties as such.

Title 30, Section 21, Code of Alabama 1940, as amended by Act No. 325, General Acts of 1943, page 309.

The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty-one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or house holder his name may be placed on the jury roll and in the jury box. No person over the age

of sixty-five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so.

STATEMENT OF THE FACTS

I THE COMMISSION OF THE CRIME

On July 28, 1952, the prosecutrix, Mrs. Mabel Ann Crowder, was residing on Cleveland Avenue in a quiet residential section of the City of Montgomery, in Montgomery County, Alabama (R. 52). She was a married white woman. At about 12:15 P.M. o'clock on that date she was at home and was alone. She was partly undressed and was sitting in her bedroom taking down her hair. She was sitting before her dresser. She looked up and into the mirror of her dresser and saw the petitioner, a seventeen-year-old Negro, standing in the doorway of her bedroom (R. 60). She was frightened and surprised, and ordered him out of her house, but he jumped towards her and grabbed her by the throat and arm. She screamed and struggled in an unsuccessful effort to protect herself from his assault (R. 60).

The petitioner, after struggling with prosecutrix, forced her to remove part of her underclothes. He then forced her onto a bed, and proceeded to have sexual intercourse with her against her will, and without her consent, holding her by the throat and arm while raping her (R. 61). The medical proof shows that there was both penetration and ejaculation (R. 81, 84).

Upon completion of his act the petitioner inquired of the victim whether she was going to report

the rape to the police, saying to her: "I ought to kill you." (R. 53). She promised not report the crime, provided he would leave her home immediately. The petitioner had demanded money and she had given him some money from her billfold. He then started beating her in the face and stomach, and she fell to the floor in a dazed and unconscious condition. Holding her by the hair, the petitioner then beat her head against the floor several times (R. 53, 66).

After petitioner left her home, the victim made her way to the house next door and was administered first aid treatment and the police were summoned by the neighbor at 12:40 P.M. o'clock (R. 52). The victim was in a severe state of shock, was extremely nervous, was hysterical, was crying, and was badly bruised and bleeding (R. 68). She informed her neighbor that she had been raped and beaten by a Negro male (R. 68), and she gave a description of her assailant which in major particulars conforms to the physical description of the petitioner (R. 68, 98). The victim was soon removed to an army hospital, where she remained for several days under examination and treatment (R. 69).

A medical examination of the prosecutrix was made immediately following the rape and upon her arrival at the Maxwell Air Force Base Hospital. This examination disclosed that there was present in her vagina positive male spermatozoa (R. 81, 84). The examination confirmed her statements to the effect that she recently had been attacked and forced to submit to sexual intercourse.

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At 1:00 P.M. o'clock on the date of the crime, the petitioner solicited and was given an automobile ride at a point two blocks north of the victim's home. Petitioner was running up the street towards Fairview Avenue, the victim's home being south and to his rear. He stopped a salesman, Mr. Wilmer Rucker Clark, Jr., and asked for a ride to town. Mr. Clark testified that the petitioner "was sweating profusely and smelled very loudly," although the petitioner was neatly dressed. He rode with Mr. Clark for several blocks and then left Mr. Clark's car at the intersection of Fairview and Cleveland Avenues, eight or nine blocks north of the scene of the crime. (R. 71-76).

II APPREHENSION AND ARREST

The petitioner was arrested by the Sheriff's deputies at 2:10 P.M. on Monday, November 10, 1952. After brief incarceration in the county jail, he was removed to the State Penitentiary, Kilby Prison, located on the outskirts of the City of Montgomery. He arrived at Kilby Prison at 3:00 P.M. o'clock, and was confined there until 11:00 A.M. o'clock on Wednesday, November 12, at which time he was taken to the police headquarters of the City of Montgomery, a distance of several miles from Kilby Prison. (R. 135-137).

At police headquarters in downtown Montgomery petitioner was confronted by the prosecutrix, Mrs. Mabel Ann Crowder, who asked him: "Why

did you do it?", in answer to which the petitioner shook his head and said: "I don't know." When the prosecutrix confronted the petitioner, police officers inquired of him: "Where do you remember her from?", in answer to which the petitioner said: "Cleveland Avenue, the first one." The petitioner admitted to Mrs. Crowder that he had entered her home by the rear door. It was clearly shown by the prosecution that no force, intimidation, threats, or coercion had been used against the petitioner during his detention at police headquarters, prior to his making the inculpatory statements aforesaid. After this interview at police headquarters, petitioner was returned to Kilby Prison. (R. 55, 57, 59).

During a psychiatric examination, made at Kilby Prison on November 13, and at the County Jail on November 20, the petitioner admitted to the psychiatrist that the petitioner had raped Mrs. Crowder and that he had had an ejaculation (R. 166). The petitioner testified on trial in his own defense. He denied having committed the offense (R. 142). He admitted that he had, on Wednesday, November 12, while detained at police headquarters, answered, "I don't know," when Mrs. Crowder had asked him why he had attacked her (R. 147). He testified that he would not have made such inculpatory statement had not law-enforcement officers threatened him while he was held in custody at Kilby Prison during the period of Monday, November 10, to Wednesday, November 12 (R. 147). He testified that on Monday he was questioned until about dark and was allowed to sleep a short while, where-

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upon a deputy prison warden woke him and took him into the room containing the electric chair. He testified that he and the deputy warden sat down and the deputy warden said to him: "The only thing that is going to keep you out of the electric chair, you are going to say you did it." (R. 135-138).

During the trial the prosecutrix positively identified the petitioner as the person who had entered her home and raped her on July 28, 1952 (R. 60).

III TRIAL

The trial of the defendant opened in the Circuit Court of Montgomery County, Alabama, on November 26, 1952. The court room was cleared by the Judge in accordance with the provisions of the Alabama Constitution of 1901, Section 169, and Title 15, Section 320, Code of Alabama 1940 (R. 10). The petitioner then moved the Court to permit the public to remain (R. 10); to allow a private stenographic reporter to remain (R. 11); to set aside the proceedings already had (R. 12); to quash the indictment (R. 12-14); to permit the public to remain (R. 14); to permit the relatives of the petitioner to remain (R. 14); to exclude the public only while the prosecutrix testifies (R. 15); to quash the venire for exclusion of Negroes (R. 15). All of the above motions, except the last, were overruled or denied.

On the motion to quash the venire for exclusion of Negroes, the Court stated that because he was a

member of the Jury Commission and would be a necessary witness, he would recuse himself and that a special judge would have to be appointed and the case continued until November 28 (R. 15, 16).

The defendant, his counsel and the State agreed upon James J. Carter, Esq., as Special Judge and an appointment to him was issued by the Governor of Alabama (R. 21).

On November 28th, the trial was resumed (R. 21, 22). Hearing on the defendant's motion to quash the venire for exclusion of Negroes was heard in the Judge's chambers at the request of Petitioner's counsel (R. 24). The members of the Jury Commission and others testified at length to the general effect that Negroes were not systematically excluded from the jury panels of Montgomery County (R. 24-43).

Trial was resumed in the Court Room and the jury qualified (R. 46-48). A struck jury was selected and sworn (R. 48). All witnesses for the State and the defendant were sworn and placed under the rule (R. 48). The Court then announced that in accordance with constitutional and statutory authority, the court room would be cleared of all persons except jurors, officials of the Court, law enforcement officers, members of the Bar, members of the Press and relatives of the accused (R. 48). The Court asked petitioner's counsel if he desired a private stenographer in accordance with his previous request and counsel stated that he did not (R.

49). The Court then proceeded to take testimony (R. 52).

After the evidence was presented and both the State and Defense had rested, petitioner moved for a mistrial because one juror had answered falsely on oral examination (R. 172). The Court offered Petitioner a hearing to prove the juror was biased (R. 172, 173); but counsel stated he had no evidence to offer, but wished to question the juror (R. 173). The Court ruled that the jury had been qualified under oath and would not be requalified (R. 173).

After argument by counsel and the Court's charge, the jury retired, and later returned a verdict of guilty and fixed petitioner's punishment at death. (R. 183).

BRIEF AND ARGUMENT

THE INCULPATORY STATEMENTS

I.

Certain inculpatory statements made by the petitioner were allowed in evidence over the objection of counsel for the petitioner. In the Montgomery Police Headquarters on November 12, 1952, the prosecuting witness confronted the petitioner and asked him, "Why did you do it?" Petitioner shook his head and said, "I don't know." (R. 59.) At a later meeting someone present asked the petitioner, "Where do you remember her from?" To which he replied, "Cleveland Avenue, the first one." (R. 59.) The prosecuting witness also asked petitioner by which door he entered her house and he replied that he entered by the back door (R. 60). The trial court heard evidence outside the presence of the jury concerning the voluntary character of the statements, but limited this examination to the events at the police station (R. 56-59).

The witness Clark testified that at the time of the offense he gave a ride to a person filling the description of the assailant and that the person was the petitioner (71-73). In the Montgomery County jail, on November 17, 1952, the witness confronted the petitioner and the petitioner acknowledged that he had been Clark's passenger (R. 74-75). Here again an examination concerning the voluntary character of the statement was limited to the immediate surrounding circumstances (R. 74).

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Dr. Bazar, a psychiatrist, testified that while he was examining the petitioner as to his sanity or insanity the petitioner confessed to him (R. 164-166). At no time did the trial court permit evidence of transactions allegedly occurring at Kilby Prison prior to the time statements were made.

Whether the trial court's action in these instances violated the petitioner's rights under the Fourteenth Amendment is thus presented.

(A) THE INCULPATORY STATEMENTS WERE NOT COERCED AS A MATTER OF LAW.

Although an original confession may have been obtained by improper means, later confessions may be admitted if the court believes from the length of time intervening or from other circumstances that the hopes or fears that prompted the earlier confession have been dispelled.

State v. Dreher, 166 La. 924, 118 So. 85; Cert. den. 278 U. S. 641, 73 L. Ed. 556;

Green v. Commonwealth, 83 S. W. 638, 26 K. L. R. 1221;

Lyons v. Oklahoma, 322 U. S. 596, 88 L. Ed. 1481, 64 S. Ct. 1208;

Whitten v. State, 86 Fla. 111, 97 So. 496, dismissed 267 U. S. 608, 69 L. Ed. 812;

Smith v. State, 74 Ark. 397, 85 S. W. 1123;

Mangum v. U. S., 289 F. 213;

Palakiko v. Harper, 209 F. 2d 75;

U. S. ex rel Weber v. Ragen, 176 F. 2d 579; Cert. den. 336 U. S. 969, 69 S. Ct. 930; *People v. Weber*, 401 Ill. 584, 83 N. E. 2d 297; Cert. den. *Weber v. State of Ill.*, 336 U. S. 969, 69 S. Ct. 930.

When the inculpatory statements were made (R. 59, 74, 75, 164-166) the petitioner was no longer under the influence of the alleged coercive circumstances. The statements were not made during the course of formal interrogation, but apparently came during ordinary conversation between petitioner and those to whom the statements were made. In the case of the statement of Dr. Bazar (R. 164-166) it was made during the course of his examination, not as to petitioner's guilt, but as to his sanity. The statements, other than one to Dr. Bazar were made in the Montgomery City Police Headquarters or the Montgomery County jail, while the alleged coercive treatment is said to have taken place at Kilby Prison. The statements to Dr. Bazar were made in his presence only and without the presence of any police or penitentiary officers (R. 164).

As was said in *Lyons v. Oklahoma*, 322 U. S. 596 at 603, 88 L. Ed. 1481, 64 S. Ct. 1208:

> "The Fourteenth Amendment does not protect one who has admitted his guilt because of forbidden inducements against the use at the trial of his subsequent confessions under all pos-

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sible circumstances. . . . If the relation between the earlier and later confession is not so close that one must say the facts of one control the character of the other, the inference is one for the triers of fact and their conclusion, in such uncertain situation that the confession should be admitted as voluntary, cannot be a denial of due process."

In *Lyons v. Oklahoma*, supra, some twelve hours had elapsed between the improperly obtained confession and the one introduced into trial. In the meantime the prisoner had been transferred from the custody of the sheriff to that of the warden. In that case also the court determined the voluntariness of the confession in the absence of the jury. The similarity to the case at bar is apparent.

In *People v. Weber*, 401 Ill. 584, 83 N. E. 2d 297, the prisoner objected to the introduction of a confession on the grounds that earlier ones had been obtained by coercive means. The Supreme Court of Illinois rejected this theory. The same point was brought up in this Honorable Court on petition for writ of certiorari; *Weber v. State of Illinois*, 336 U. S. 969, 69 S. Ct. 930, and in a petition for writ of habeas corpus; *U. S. ex rel. Weber v. Ragen*, 176 Fed. 2d 579, Cert. den. 338 U. S. 809, 70 S. Ct. 49.

Prior to the introduction of each of the inculpatory statements the State laid the usual predicate. Petitioner presented no evidence relating to any alleged coercion at the time and place of the statement

other than the fact that he was still in custody and without counsel. All of petitioner's proffered testimony related to events allegedly occurring in other places and at other times. This Honorable Court has held that the requirements of the Fourteenth Amendment do not place such a rule of evidence upon State courts which would require them to exclude a confession because it was obtained while a prisoner was uncounseled and illegally detained. *Stroble v. Cal.*, 343 U. S. 181; *Lisbena v. Cal.*, 314 U. S. 219; *Stein v. N. Y.*, 346 U. S. 156, 97 L. Ed. 1522.

We submit that testimony that the inculpatory statements were made at a place removed from the alleged coercion, to persons other than those alleged to have applied such coercion, many hours later, and in entirely different circumstances overcame any presumption that the statements were coerced. *State v. Guild*, 5 Halstead 163, 18 Am. Dec. 404; *State v. Moore*, 210 N. C. 686, 188 S. E. 421.

(B) THE TRIAL COURT'S ACTION IN LIMITING TESTIMONY CONCERNING THE INCULPATORY STATEMENTS DID NOT VIOLATE THE FOURTEENTH AMENDMENT.

Throughout the trial of the case at bar the trial judge limited the examination concerning the voluntary character of the inculpatory statements to the immediate circumstances surrounding the statements. This same procedure was followed in *Whitten v. State*, 86 Fla. 111, 97 So. 496. In that case the prisoner confessed to a private citizen while being held in jail pending trial. He objected to the intro-

duction in evidence of this confession on the grounds that prior confessions had been obtained by means of coercion. The jury was removed from the courtroom and counsel for the defendant offered to show coercion by the sheriff in obtaining the prior confessions. The trial court restricted the investigation to facts surrounding the confession in question only and would not permit counsel to go into the prior confession. The Supreme Court of Florida upheld the action and error to this Honorable Court was dismissed. *Whitten v. State of Fla.*, 267 U. S. 608, 69 L. Ed. 812. See also *People v. Kinney*, 202 N. Y. 389, 95 N. E. 756.

The preliminary determination of the voluntary character of a confession is, under Alabama rules, left to the enlightened discretion of the trial court and we contend that no abuse of this discretion is shown here.

Ex parte Fewell, ... Ala. ....., 73 So. 2d 558;

Dennison v. State, 259 Ala. 494, 66 So. 2d 552.

(C) THE ADMISSION OF THE INCULPATORY STATEMENTS DID NOT REQUIRE A REVERSAL OF THE CASE.

Apart from the inculpatory statements, there was ample evidence to sustain the verdict. The prosecuting witness was positive in her identifica-

tion of the petitioner (R. 60) and he was seen in the vicinity immediately after the crime was committed (R. 71). The trial court submitted the case to the jury with the following instructions (R. 175):

> "Now, as to any statement, or alleged confession or admission which may have been made, the weight of such statement or admission is for you and you alone, and you are to determine the weight and the credibility of the evidence here in the light of the circumstances that were existing at the time such statement was given."

In such a state of the record it cannot be held that the jury based its conviction on the inculpatory statement. This being true no error was committed in allowing the introduction of the statement.

Stein v. N. Y., 346 U. S. 156, 97 L. Ed. 1522;

Johnson v. State, 242 Ala. 278, 5 So. 2d 632, Cert. den. 316 U. S. 693.

We submit that the trial court did not erroneously apply the case of *Stein v. New York*, supra. In the *Stein* case the trial judge, as a preliminary matter, found the confession to be voluntary. The confession was then submitted to the jury for its consideration. After the jury had considered the evidence and returned its verdict of guilty there was a motion to set aside the judgment and verdict,

which motion was denied. This action added weight to the trial judge's determination of the voluntary character of the confession.

Under this state of facts the Majority in the Stein case held that in view of the fact that there was sufficient evidence to convict without the confession it made no difference whether the jury accepted the confession or rejected it.

As in the *Stein* case, supra, the trial judge in the case at bar made his preliminary findings as to the voluntary character of the confession and then submitted that confession to the jury with appropriate instructions. This, we feel, brings the instant case squarely within the holding of the *Stein* case.

PROPOSITION NO. II

THE LACK OF PROPORTIONAL REPRESENTATION OF NEGROES ON THE JURY DOES NOT CONSTITUTE DISCRIMINATION UNDER THE FACTS PRESENTED.

In his petition for writ of certiorari to review the judgment of the Supreme Court of Alabama, the petitioner contends that Negroes were systematically excluded from jury service in Montgomery County, Alabama, and that because of such exclusion he was denied "due process" in his trial and conviction for the crime of rape. Before he was placed on trial he filed a motion to quash both the indictment by the grand jury and the petit jury panel (R. 16, 20). Alleged systematic exclusion of Negroes from the jury rolls was the basis for this motion. The testimony of five witnesses was heard by the trial court on the motion (R.28-43). The motion was overruled and the trial proceeded. We submit that this ruling was not error and involves no denial of "due process" for the reason that the proof completely failed to show the systematic exclusion of Negroes from the jury rolls of Montgomery County, Alabama.

Mere allegations of discrimination are not sufficient in and of themselves to sustain such a contention and the burden of proof to show an alleged

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discrimination is on the one making the allegation.[1] This burden was not met by petitioner.

Two of the jury commission, viz., Eugene W. Carter, Circuit Judge, and John R. Matthews, Clerk of the Court, were called as witnesses for the petitioner in support of his motion to quash the venire. Judge Carter's testimony (R. 28-36) was to the effect that, although he did not know exactly how many names of Negroes were in the jury box, the jury commissioners have regularly endeavored to secure the names of qualified Negro citizens and have regularly placed the names of such citizens on the jury rolls. He testified that, in selecting citizens for the jury rolls, the identical qualifications are used in respect to both white and colored citizens, and that no Negro has ever been excluded on the basis of race or color. He testified that the jury box does contain the names of a good many Negroes, and that the jury commission has for the past several years regularly solicited the names of Negro citizens from Negro clubs and other sources in an effort to select and qualify as many Negro citizens as possible for jury service. He testified that, during his years of experience as a trial judge in Montgomery County, he has seen Negroes drawn for service on both grand and petit juries in that county.

The Clerk of Court, John R. Matthews, was called as a witness for the petitioner in his efforts

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[1] *Smith v. Mississippi*, 162 U. S. 592, 40 L. Ed. 1082, 16 S. Ct. 900; *Tarrance v. Florida*, 188 U. S. 519, 47 L. Ed. 572, 23 S. Ct. 402; *Akins v. Texas*, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276.

to establish the systematic exclusion of Negroes (R. 36-37). This witness testified that the jury commissioners have regularly secured the names of Negroes qualified for jury service from Negro churches and labor organizations, and that the witness has never seen a Negro excluded from jury service because of race or color. He testified that, on the contrary, if a Negro citizen possesses the qualifications requisite for jury service, his name has been placed on the jury rolls.

The prosecution called witnesses for the purpose of refuting the contention that Negroes have been systematically excluded from jury service in the said county. Circuit Judge Walter B. Jones, President of the Jury Commission since 1923, testified that the jury commission has never discriminated against Negroes (R. 37-39). He testified that the jury commission has made "countless efforts" to secure the names of qualified Negroes for jury service, and that more diligence has been exercised by the commission to secure Negro jurors than has been exercised to secure white jurors. He explained that on one occasion in 1943 a public mass meeting was held in Montgomery County for the express purpose of explaining the problem of securing enough qualified persons for jury service, and that qualified Negroes were particularly desired for jury service. Judge Jones testified that about 5,000 names are on the jury rolls of the said county and that the jury commission, in the selection of such names, has not even discussed or considered

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the question of race or color. He testified that the said 5,000 names are not identified, either on the jury rolls or in the jury box, as to race or color.

A Negro school teacher, J. J. Pierce, testified for the prosecution on the hearing on the motion to quash (R. 40-41). He testified that he, during the previous 8 or 10 years, has served on juries of Montgomery County, Alabama, upon at least six occasions, and that a member of the jury commission requested him to ascertain and submit to the commission a list of Negroes qualified for jury service. He testified that on one occasion, when he was called for jury duty, three other Negroes were also called, and on another occasion when Pierce was called two other Negroes were called (R. 41).

A Negro real estate dealer and lifelong resident of Montgomery County, D. Caffy, also testified on the hearing on the motion to quash the venire (R. 41-43). He testified that he has served on juries in Montgomery County, and that he was requested by a member of the jury commission to submit the names of Negroes qualified for jury service.

Petitioner attempts to show that only eight and one-half percent (8½%) of the members of any jury panel were Negroes while Negroes make up forty-three point six percent (43.6%) of the population of Montgomery County. The lack of proportional representation of races on the jury does not consti-

tute discrimination.[2] Inequality in the number selected does not in itself show discrimination. There must be present some design or purpose to discriminate, which may be shown by systematic exclusion of eligible jury men of the proscribed race or by unequal application of the law to such an extent as to show intentional discrimination.[3]

In *Brown v. Allen*, 344 U. S. 443, 97 L. Ed. 469, 77 S. Ct. 397, the defendant contended that discrimination was proved by evidence that thirty percent (30%) of those eligible as jurors were Negroes while only seven percent (7%) of the names in the jury box were names of Negroes. A majority of the Court held that no discrimination against Negroes in the selection of the jury had been shown.

In Alabama, jury commissioners are required to place on the jury roll "the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character, and sound judgment; . . ."[4] There are numerous ex-

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[2]*Akins v. Texas*, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276; *Thomas. v. Texas*, 212 U. S. 278, 53 L. Ed. 512, 29 S. Ct. 383;*Cassell v. Texas*, 339 U. S. 282, 94 L. Ed. 839, 70 S. Ct. 629; *Brown v. Allen*, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397; *Kennedy v. State*, 186 Tenn. 310, 210 S. W. 2d 132, cert. den. 333 U. S. 846, 92 L. Ed. 1129, 68 S. Ct. 659; *People v. Price*, 371 Ill. 137, 20 N. E. 2d 61, cert. den. 308 U. S. 551, 84 L. Ed 463, 60 S. Ct. 94.

[3]*Akins v. Texas*, supra, where the jury commissioners very carefully placed the name of one Negro on the jury panel.

[4]Title 30, Section 21, Code of Alabama 1940, as amended by Act No. 325, General Acts Ala. 1943, page 309.

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emptions from this mandate.[5] The petitioner here presented no testimony as to how many Negroes had been exempt by reason of Title 30, Section 3, Code of Alabama 1940, as amended, or how such exemptions might effect the ratio. In the absence of evidence to the contrary, there is a presumption or inference that officers in charge of the selection and summoning of the jury have performed their duty fairly and justly, without discrimination against any eligible class or race.[6] No evidence of such discrimination is presented here.

The case of *Cassell v. Texas*, 339 U. S. 282, 94 L. Ed. 839, 70 S. Ct. 629, is no basis for reversal of the case at bar. In that case the majority opinion held in part as follows (at 291):

> "The statements of the jury commissioners that they chose only whom they knew, and that they knew no eligible Negroes in an area where Negroes made up so large a proportion of the population, proved the intentional exclusion that is discrimination in violation of petitioner's constitutional rights."

In the instant case there is no testimony that the jury commissioners "knew no eligible Negroes." To the contrary, the witness Carter testified ". . .I

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[5]Title 30, Section 3, Code of Alabama 1940, as amended by Act No. 243, Acts of Alabama 1943, page 197.

[6]*Tarrance v. Florida*, 188 U. S. 519, 47 L. Ed. 572, 23 S. Ct. 402, affg. 43 Fla. 446, 30 So. 685.

once went to the clubs, lists were made up of those who were willing to serve, and secured the first ones I put in there. Every time we got the names of a few negroes they were put in of course." (R. 28) He further testified that they had at least one-half the membership of one Negro club that he knew of (R. 34). He also testified that one Negro he recalled in particular had submitted to him the names of at least twelve Negroes which he presented to the commission (R. 29).

Another member of the jury commission, Judge Walter B. Jones, the Presiding Judge of the Circuit, testified to holding mass meetings for the purpose of obtaining names of Negroes and white persons for jury duty (R. 37-39).

Although the record indicates that the commissioners' acquaintenceships among Negroes were not so extensive as that among whites, the testimony shows conclusively that personal acquaintance was not the basis of selection. The record shows that every effort was made to obtain names of Negroes for the jury box and that no man had ever been turned down because of his race (R. 29, 34, 35, 37 and 38).

A further finding in *Cassell v. Texas*, supra, was that no more than one Negro was ever on a panel at one time.[7] This evidenced a design to limit

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[7]Concurring opinion of Mr. Justice Frankfurter.

the number of Negroes serving. In the case at bar varying numbers were shown to have served from time to time with some occasions where no Negroes served. We submit that there was no evidence of a scheme or plan to pay token tribute only to the requirements laid down by this court. Both grand and petit juries in Alabama are drawn from the box and no selection of names is permitted.[8] The evidence shows that the names were placed in the box and drawn therefrom without regard to race or color.

Respondent earnestly contends that the trial court's action in denying the motions to quash the venire and the indictment was rightly affirmed by the Supreme Court of Alabama. As was stated in *Akins v. Texas*, 325 U. S. 398, 401, 89 L. Ed. 1692, 65 S. Ct. 1276:

> "While our duty, in reviewing a conviction upon a complaint that the procedure through which it was obtained violates due process and equal protection under the Fourteenth Amendment, calls for our examination of evidence to determine for ourselves whether a Federal constitutional right has been denied, expressly or in substance and effect, (citing cases) we accord in that examination great respect to the conclusions of the state judiciary. Pierre v. La. 306 U. S. 354, 358, 83 L. Ed. 757, 760, 59 S. Ct. 536."

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[8]Title 30, Sections 30, 63, Code of Alabama 1940.

PROPOSITION NO. III

THE PETITIONER WAS NOT DEPRIVED OF DUE PROCESS BY THE ACTION OF THE TRIAL COURT IN EXCLUDING THE GENERAL PUBLIC FROM THE TRIAL PROCEEDINGS, AND ALLOWING THE PRESS, MEMBERS OF THE BAR, A STENOGRAPHER FOR THE BENEFIT OF PETITIONER, COURT OFFICIALS, AND PETITIONER'S FAMILY TO REMAIN.

During the petitioner's trial in the Circuit Court of Montgomery County, Alabama, and before the actual trial had begun, the trial court excluded the general public from the courtroom (R. 2, 10). The press, members of the bar, a stenographer for petitioner's benefit, relatives of the petitioner, and court officials were allowed to remain (R. 6, 12, 15, 22). The petitioner here contends that he was thus denied the due process of law guaranteed him by the Fourteenth Amendment (Petitioner's brief, page 39).

The petitioner was on trial under an indictment charging the offense of rape. His victim was a married white woman. Petitioner is a Negro.

In the exercise of its wise discretion the trial court ordered the courtroom cleared of spectators. It is expressly provided by constitution and statute in Alabama that the trial court may exclude the

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public in prosecutions for rape. Article 6, Section 169, Constitution of Alabama 1901, provides:

> "In all prosecutions for rape and assault with intent to ravish, the court may, in its discretion, exclude from the courtroom all persons except such as may be necessary in the conduct of the trial."

Title 15, Section 320, Code of Alabama 1940, contains the same provision.[9]

Therefore, by virtue of both constitution and statute, supra, it is within the discretion of the trial court to exclude the public from the courtroom where the court deems it necessary so to do in order to preserve decorum, to secure the administration of justice, or to facilitate the proper conduct of the trial.

We agree with petitioner that the right to a public trial is deeply rooted in our legal tradition,[10] and we also join with petitioner in abhoring "Star

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[9]"In all prosecutions for rape and assault with intent to ravish, the court may, in its discretion, exclude from the courtroom all persons, except such as may be necessary in the conduct of the trial; and in all other cases where the evidence is vulgar, obscene, or relates to the improper acts of the sexes, and tends to debauch the morals of the young, the presiding judge shall have the right, by and with the consent and agreement of the defendant, in his discretion, and on his own motion, or on the motion of the plaintiff or defendants, or their attorneys, to hear and try the said cause after clearing the courtroom of all or any portion of the audience whose presence is not necessary.

[10]Brief of Petitioner, pages 39-49.

Chamber" proceedings.[11]

However, petitioner has failed to distinguish between *secret* or Star Chamber proceedings, and a *public* trial in all respects except the exclusion of spectators.[12] A public trial "is the opposite of a secret trial or a trial in camera or at star chambers. In the very nature and necessity of things it was never contemplated that all of the public should be present or privileged to be present in order to constitute a public trial. Attendance was necessarily limited to the capacity of the courtroom accommodations, which, as is well known, is as often inadequate as otherwise. . . . Some of the public not actually engaged in the trial must be privileged or allowed to attend the trial to constitute it public, but no irreducible minimum has ever been proposed or named as yet."[13] The presence of a few newspaper reporters (allowed in instant case) practically assures a public trial, or at least a trial with publicity.

In addition, under the law,[14] in every criminal

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[11]Ibid, page 40.

[12]"Formerly . . . there were two kinds of trials, public and secret. Before they declared their independence in the Colonies and in England star chamber proceedings were of common occurrence, and it was to abolish and forbid secret or star chamber trials that called forth the provisions of the federal and state constitutions requiring public trials. Arbitrary and secret deprivations of life, liberty, and property were no longer to be tolerated." *Keddington v. State*, 19 Ariz. 457, 172 P. 273 (1918).

[13]Ibid, at 274.

[14]Title 13 §§ 261-263, Code of Alabama 1940.

case tried in an Alabama Court of record (The Circuit Court of Montgomery County of course included) the whole proceedings, including motions, questions to witnesses and their answers, rulings of the court and remarks by counsel or court, are stenographically taken down, and if the defendant is not satisfied with the verdict and desires to have the proceedings reviewed on appeal, he is furnished with a full transcript of all that transpired during his trial. "Thus all those things that were hidden within the walls of the courtroom and memories of the criminal triers before we had stenographers are now made public records, open to the inspection of all interested parties."[15]

The main case relied on by petitioner is *In Re Oliver*.[16] But in the *Oliver* case This Court condemned a trial under Michigan's one man "Judge Grand Jury" investigation where the "Judge Grand Jury" convicted the accused of contempt for statements made before him.[17] That this case has no resemblance to and is no authority for making unconstitutional the procedure in the instant case is,

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[15] *Keddington v. State*, supra, at 274.

[16] 333 U. S. 257 (1947), Brief of Petitioners, pages 40, 42, 47.

[17] *In re Oliver*, supra.

we submit, obvious.[18] In *Oliver*, the only persons allowed in the courtroom were the defendant and court officials.[19] Defendant there, was denied most of the rights that an accused has long been guaranteed by our constitutional system. Use of this case again shows petitioners failure to note the controlling distinction between a secret trial and a public trial in which only spectators are excluded.

An accused is entitled to a public trial[20] but "(b)y this is not meant that every person who sees fit shall in all cases be permitted to attend criminal trials; because there are many cases where, from the character of the charge and the nature of the evidence by which it is to be supported, the motives to attend the trial on the part of portions of the

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[18] A comparison of the rights of the accused in *In re Oliver*, supra, and the instant case is revealing:

In re Oliver	*Instant Case*
1. Defendant allowed no counsel.	1. Defendant allowed counsel.
2. No right of cross-examination.	2. All rights of cross-examination of witnesses.
3. No confrontation by adverse witnesses.	3. Defendant was present during all of prosecution.
4. No public record of proceedings.	4. Complete record made of trial.
5. Press excluded.	5. Press allowed.
6. Family of defendant excluded.	6. Family of defendant allowed.
7. No jury.	7. Jury.
8. No right to produce witnesses for defense.	8. Right to present a complete defense as in any criminal trial.

On the one hand we have secret hearings, without a jury, in which the accused is questioned and convicted in a manner similar to that of the Inquisition. On the other hand, we have a public trial in all respects except the presence of disinterested spectators.

[19] *In re Oliver*, supra.

[20] Brief of Petitioner, page 41.

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community would be of the worst character, and where a regard to public morals and public decency would require that at least the young be excluded from hearing and witnessing the evidences of human depravity which the trial must necessarily bring to light."[21]

The constitutional requirement of a public trial "is fairly observed, if, without partiality or favoritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would only be drawn thither by a prurient curiosity, are excluded altogether."[22]

In a prosecution for rape, the exclusion from the courtroom of all persons save litigants, witnesses, jurors, counsel, officials of the court, and representatives of the press is not an abuse of the trial court's discretion, and such exclusion does not deprive the defendant of due process of law in violation of the

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[21] 1 Cooley on Constitutional Limitations, (8th Ed.) 647. See Wigmore on Evidence, (3rd Ed.) §1835.

[22] *Cooley*, supra, at 647. *Robertson v. State*, 64 Fla. 437, 60 So. 118 (1912).

Fourteenth Amendment to the Federal Constitution.[23]

In a rape case there is no invasion of the defendant's constitutional rights in the exclusion, by order of the court, of all persons from the courtroom and trial, except court officials, despite the constitutional requirement that every defendant in a

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[23]*Reagan v. U. S.*, 202 F. 488, 44 L. R. A. (N.S.) 583, (9th Cir. 1913) (Conviction for rape in District Court of Alaska, courtroom cleared of all except court officials, witnesses, and members of the bar—Affirmed); *Melanson v. O'Brien*, 191 F. 2d 963, (1st Cir. 1951) (Order denying petition for writ of habeas corpus vacated on other grounds); *Sawyer v. Duffy*, 60 F. S. 852 (D. C. Cal. 1945) (Conviction in California court of exciting lust of child under fourteen. Court cleared of spectators—Affirmed); *Benedict v. People*, 23 Colo. 126, 46 P. 637 (1896) (Conviction in Colorado court of infamous crime against nature. Court cleared of all except court officials, members of bar, law students, witnesses, and defendant's family—Affirmed); *Commonwealth v. Blondin*, 324 Mass. 564, 87 N. E. 2d 455 (1949) (Conviction for rape in Massachusetts court. Court cleared of all except court officials, members of bar, witnesses, stenographers and members of press—Affirmed); *Keddington v. State*, supra, (Conviction in Arizona court of causing the dependency of a girl. Court cleared of all except court officials, member of bar, witnesses, family of accused, members of press—Affirmed); *Moore v. State*, 151 Ga. 648, 108 S. E. 47 (1921) (Conviction of rape in Georgia court. Court cleared of all except court officials, members of the bar, family of accused, members of press—Affirmed); *People v. Swafford*, 65 Cal. 223, 3 P. 809 (1884), (Conviction in California court of abducting a girl under age, for prostitution. Court cleared of all except court officials and persons connected with the case—Affirmed); *Robertson v. State*, 64 Fla. 437, 60 So. 118 (1912) (Conviction in Florida Court of manslaughter in causing the death of a young woman by causing her to miscarry or abort an unborn child. Court cleared of all except court officials, members of bar, witnesses, family of accused—Affirmed); *Sallie et al. v. State*, 155 Miss. 547, 124 So. 650 (1929) (Conviction for attempt to rape in Mississippi court. Court cleared of all spectators—Affirmed); See *Baker v. Utecht*, 161 F. 2d 304 (8th Cir. 1947) (Cer. den. 331 U. S. 856); *State v. Callahan*, 100 Minn. 63, 110 N. W. 342 (1907).

criminal prosecution be afforded a "public trial."[24] If the evidence is obscene or vulgar, the court, in the interest of public morality or to save the witnesses from embarrassment, may permit the presence only of court officials, jurors, witnesses, and others connected with the case, and may exclude the general public.

It must be remembered that in the instant case, the trial court acted under authority of Alabama constitutional and statutory provisions allowing exclusion of spectators in rape cases.[25] Accordingly, respondent does not rely only on case authority for allowing exclusion of spectators in trials of a salacious or disgusting nature, but also calls to the attention of this Honorable Court, the presumptions accorded favoring the constitutionality of state constitutional and statutory provisions.[26]

Seven states are listed by petitioner as having

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[24] *Hull v. State*, 232 Ala. 281, 167 So. 553 (1936); *Scott v. State*, 249 Ala. 304, 30 So. 2d 689 (1947); *Wade v. State*, 207 Ala. 1, 92 So. 101 (1921).

[25] See discussion, supra, page 31.

[26] *Everson v. Board of Education*, 330 U. S. 1, 67 S. Ct. 504, 91 L. Ed. 911, rehearing den. 330 U. S. 855, 67 S. Ct. 962, 91 L. Ed. 1297; *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, 64 S. Ct. 1384, 89 L. Ed. 1725; *Davies Warehouse Co. v. Bowles*, 321 U. S. 144, 64 S. Ct. 474, 88 L. Ed. 635; *Davis v. Dept. of Labor and Industry of Wash.*, 317 U. S. 249, 63 S. Ct. 225, 87 L. Ed. 246, rehearing denied 317 U. S. 713, 63 S. Ct. 438, 87 L. Ed. 567; *Wampler v. LeCompte*, 282 U. S. 172, 51 S. Ct. 92, 75 L. Ed. 276; *Toombes v. Citizens Bank of Waynesboro*, 281 U. S. 643, 50 S. Ct. 434, 74 L. Ed. 1088; *Gitlow v. State of New York*, 268 U. S. 652, 45 S. Ct. 625, 69 L. Ed. 1138.

constitutional provision or statutes which permit a trial judge to exclude spectators from some criminal trials of a salacious or disgusting nature.[27] There are an additional five states,[28] which by statute allow exclusion of minors during these trials. We submit that if it is constitutional for a trial court to exclude *minors* during a trial of a salacious or disgusting nature, then it is constitutional to exclude all *spectators* as in the instant case. The reason is obvious. In both situations persons are excluded from the courtroom; in both, it is done to protect the general public and/or to facilitate the proper conduct of the trial; in both, an accused is tried without whatever aid or injury the excluded persons might bring him.

Petitioner has not cited, nor have we been able to find one case in which a Federal court has held a state exclusion statute to be unconstitutional.[29] On the contrary a Federal Circuit has found such a statute not in conflict with the Federal Constitu-

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[27]Brief of Petitioner, page 45, note 60.

[28]Kentucky Revised Statutes, 1953 § 455.130; Revised Statutes of Maine, 1944. Chapter 100, § 25; Minnesota Statutes, 1953, § 631.04; General Statutes of North Carolina, 1943, § 15-166; Wisconsin Statutes, 1953, § 256.14. Some jurisdictions also allow exclusion of spectators during civil trials, notably Canada, which allows exclusion during filiation proceedings. A complete list of authorities for exclusion is given in the notes to § 1835, Wigmore on Evidence (3rd Ed.).

[29]In *People v. Yeager*, 113 Mich. 228, 71 N. W. 491 (1897), (cited in petitioner's brief pages 43 and 45) a Michigan court held a Michigan statute to be contrary to the state constitutional guarantee of a public trial.

tion.[30] There is also authority to the effect that the Fourteenth Amendment does not require that a trial in a state court be public.[31]

Petitioner asserts that the exclusion of the general public worked to his detriment in that he did not discover the presence on the jury of the chief of the Montgomery Reserve Police Force.[32] However, petitioner made his assertion about the juror during the progress of the trial (R. 172) and was offered a hearing by the trial judge in order to show any bias on the part of the juror (R. 173). Petitioner was unable or refused to offer any evidence of the juror's bias (R. 173). Since petitioner *did* learn of

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[30]*Melanson v. O'Brien*, 191 F. 2d 963 at 965 (1st Cir. 1951). There the court said "Presumably the trial justice acted pursuant to Mass. G. L. (Ter. Ed.) Ch. 278, § 16A, providing that, in the trial of certain sex crimes where the victim is a minor under eighteen years of age, 'the presiding justice shall exclude the general public from the courtroom, admitting only such persons as may have a direct interest in the case.' We agree with the Supreme Judicial Court that such a state statute is not on its face a violation of the due process clause; and without further comment we refer to the full discussion by the Supreme Judicial Court on this aspect of the case. See 324 Mass. at pages 569-573, 87 N. E. 2d 455." (*Commonwealth v. Blondin*, cer. den., *Melanson v. Mass.*, 339 U. S. 984, 70 S. Ct. 1004, 94 L. Ed. 1387).

[31]*Baker v. Utecht et al*, supra. The Eighth Circuit there said " 'the failure to provide counsel . . . (is) a violation of the due process clause. . . . By contrast, however, the denial of the right to a public trial (in part of the proceeding), where the accused enjoys the benefit of competent counsel at every stage of the proceeding, does not ipso facto involve a violation of the due process clause and operate as a jurisdictional bar to a valid judgment of conviction.' " See *Falkowski v. Mayo*, 173 F. 2d 742 (5th Cir. 1949).

[32]Brief of Petitioner, pages 39, 47, 48, 49.

the jurors supposed membership in the Reserve Police Force, before the conclusion of the trial he was in no different position than he would have been had he learned of this any time after *voir dire*. That the presence of the general public would have caused him to learn of the juror's supposed membership in time to allow him to strike this juror on *voir dire* is at best sheer speculation.

Contrary to petitioner's assertion that he was injured by the exclusion of spectators, there is adequate grounds for the belief that he benefited by such exclusion. It is a well known fact that the general body of mankind looks with no favor or complacency upon the despoiler of young womanhood, and their attendance in mass upon a trial of this kind is often taken by the jury as a mandate to convict the defendant. Thus generally speaking, the psychology of the courtroom is against, rather than for, the accused, whether he be innocent or guilty.

Petitioner was given a public trial within the provisions of the Alabama Constitution. The Federal Constitutional guarantee of a public trial, if it applies to the states, is we submit, not to guarantee a wholly public trial, but to prevent a secret trial. A trial in which disinterested spectators are excluded but court officials, members of the bar, relatives of the accused, a stenographer for the accused, and members of the press are allowed is a far cry from the *secret trial* of the Star Chamber, the letter des catre and the inquisition.[33]

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[33]See discussion, supra, pages 31-34.

Great weight, we submit, should be placed on the publicity in fact resulting from the presence of members of the press throughout the trial. "(T)wo or three newspaper reporters, with ears attune to catch everything that may be said in the course of a trial by the court, by counsel and witnesses, and carefully watching every movement and action likely to effect the trial . . . would tend more to constitute a public trial than a house full of idlers and curious courthouse loungers. Protection from oppression or arbitrariness of the courts, its officers, and the prosecuting officer, will be assured so long as trained and discriminating newspaper reporters are present at the trial, keeping close and critical watch of everything done and said, for the purpose of publication in the daily press. A larger public is made acquainted with the salient facts of the trial, even while it is progressing, through the press than it is possible to reach through the open doors of the courtroom."[34]

"While disinterested attorneys and representatives of the press are not the exclusive representatives of the public, it is equally certain that they are not officers of court nor the representatives of the state as against persons accused of crime. The trial of a criminal case, conducted in [their] presence cannot be said to be a secret trial."[35]

Petitioner has not contended nor is there any

[34] *Keddington v. State*, supra, at 274.

[35] *Moore v. State*, supra, at 52.

evidence that the trial court did not act under authority of Alabama Constitutional provision. Therefore, this Court would have to find Article 6, Section 169, Constitution of Alabama, 1901, in conflict with the Federal constitution in order to reverse on this point.[36]

In view of the nature of the offense for which the petitioner was on trial, it was in the public interest to clear the courtroom. The trial judge acted pursuant to constitutional authority. Petitioner was not deprived of due process by the action of the trial court in excluding spectators from the trial proceedings.

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[36]Note the similar statutes of other states, listed supra, footnote 28 and in petitioner's brief page 45, note 60.

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CONCLUSION

Repondent has met the objections raised by petitioner. We submit that the confession or inculpatory statements introduced at the trial were not coerced as a matter of law; that the trial court committed no error in limiting the scope of investigation concerning the inculpatory statements to the circumstances immediately surrounding such statements; and that regardless of what weight was given the inculpatory statements by the jury none of the petitioner's constitutional rights were violated.

We further submit that there was no evidence showing the systematic exclusion of Negroes from the grand or petit juries in Montgomery County, Alabama, the place of trial. To the contrary, we contend that the evidence conclusively shows that the jury box was filled without regard to race or color.

Finally, we submit that petitioner was afforded a public trial as required by the Constitution of Alabama and of the United States. Therefore, we submit that the judgment below should stand affirmed.

Respectfully submitted,
SI GARRETT
Attorney General of Alabama
ROBERT STRAUB
Assistant Attorney General
ROBERT B. STEWART
Of Counsel

SAMUEL KAUFMAN, II
Of Counsel On The Brief

CERTIFICATE

I hereby certify that I have forwarded a copy of the foregoing brief to Hon. Jack Greenberg, Counsel for Petitioner, 107 West 43rd Street, N. Y. 36, N. Y. on this the ..... day of October, 1954.

.....

ROBERT STRAUB

Assistant Attorney General of Alabama
Counsel for Respondent

APPENDIX "A"

Through inadvertence the following was omitted from respondent's cross-designation of the record and hence does not appear in the printed transcript of the record. It should appear at page 52 of The Printed Record.

(R. 76) "Q Were you, or were you not, at home on the morning of July 28th?

A I was at home.

Q Did you see this defendant at your house that morning?

A It was shortly after noon, but I did see him.

Q What were you doing at that time?

A At the time I first saw him I was sitting in the room in a rocking chair in front of my vanity taking my hair down.

Q Were you living in a house or an apartment?

A In a house.

Q Was it a two story or one story house?

A One story.

Q Which room of the house were you in?

A In the front bedroom. That is the room (R. 77) to the right of the house on the front.

Q What time did you say you saw this defendant?

A I don't know exactly. It was probably around 12:15 when he entered the house.

Q How were you dressed at that time?

A At the time he entered I had on pants, a brassiere, a garter belt, and a robe or housecoat.

Q How did you first see him?

A Through the mirror. He was back at the door and I looked into the mirror and saw him.

Q He was standing in the door?

A Yes.

Q Did he say anything to you?

A No, he didn't.

Q Did you say anything to him?

A Yes.

Q What did you say to him?

A I said, 'Get out of here.'

Q What did he do then?

A He jumped across the room and grabbed me by the throat and my arm.

Q Will you just go on and tell the jury what happened after that.

A Well, I screamed and he tightened his hand on my throat and told me not to, quit screaming, shut up, and he choked me and made me take my panties off, and forced me back on the bed and raped me and raised up from the bed, and he says, 'you are not going to report this are you?'

Q Were you then on or off the bed?

A I was sitting on the side of the bed, and he still was holding me, and I said, 'if you will leave now I won't report it.' And then he started hitting me, and hit me several times, and hit me on this side of my face, really hard in the stomach when I bent over, and as I bent over he kicked me on the right side of my face and I fell beside the bed, partly on the bed, and I was dazed a little then and he left the room, and he came back in the room a second time, and when he came back in the room he had a hat he didn't have the first time he came in

there. And he started beating me again. And there was a towel across the back of the chair. Before he started beating me, he had
(R. 78) asked me for money, and my purse was on the bed. I says, 'it is in there.' And he said, 'get it.' And I opened my pocketbook and took out my billfold and took the money out of the billfold—there wasn't very much —and I handed him the money, and after he came into the room the second time he started beating me again, and took the towel off the back of the chair and just twisted it in his hand. And I was sort of down on my knees—he had hit me—and I saw the towel just as it was in front of my face and I jerked it away from him and threw it into into the corner, and he picked me up and threw me against the floor a lot of times, and caught me by the hair and banged the side of my head against the floor a lot of times. I remember him taking a package of cigarettes and matches. And the last thing I can definitely remember is seeing him in front of the dresser, but I don't know that anything was missing.

Q Did he have intercourse with you?

A Yes, he did.

Q I will ask you this. At the time he had intercourse, was he choking you?

A Yes, sir, he had his hand on my throat.

Q He had his hand on your throat the entire time?

A Yes. He had one hand on my throat and this hand up here. (Indicating) I couldn't reach him with my left hand. I couldn't reach his chest.

Q Did you fight at him during that time?

A Yes, sir, I did. I didn't fight too much.

Q Did you scratch him?

A I don't know if I did, or not. If I did, I wasn't conscious of it. I tried to and I broke two fingernails.

Q Did he beat you at all before the actual rape?

A He had hit at me and I dodged it, and then he choked me, just choked and held me."

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, certify that the foregoing testimony of Mabel Ann Crowder is a true and correct copy of such testimony beginning with line 21, page 76, and continuing through line 31, page 78, of the

original transcript of testimony in the case of *Jeremiah Reeves, Jr. vs. State* on file in my office.

Witness my hand and seal this the ..... day of October, 1954.

.....

J. RENDER THOMAS, *Clerk*
Supreme Court of Alabama

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DECEMBER 6, 1954.

Decisions Per Curiam.

No. 120. REEVES *v.* ALABAMA. Certiorari, 347 U. S. 1012, to the Supreme Court of Alabama. Argued November 15–16, 1954. Decided December 6, 1954. *Per Curiam:* Judgment reversed. See *Canty* v. *Alabama*, 309 U. S. 629, and *Vernon* v. *Alabama*, 313 U. S. 547. *Jack Greenberg* argued the cause for petitioner. With him on the brief were *Thurgood Marshall*, *Robert L. Carter* and *Louis H. Pollak*. *Robert Straub*, Assistant Attorney General of Alabama, and *Robert B. Stewart* argued the cause for respondent. With them on the brief was *Si Garrett*, Attorney General. Reported below: 260 Ala. 66, 68 So. 2d 14.

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